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IN THE

Supreme Court, U.S.

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Supreme Court of the United States

OCTOBER TERM, 1990

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY, *et al.*,  
*Petitioners,*

v.

CITIZENS FOR THE ABATEMENT OF AIRCRAFT  
NOISE, INC., *et al.*,  
*Respondents,*

UNITED STATES OF AMERICA,  
*Intervenor.*

Petition for a Writ of Certiorari to the  
United States Court of Appeals  
for the District of Columbia Circuit

APPENDIX TO  
PETITION FOR A WRIT OF CERTIORARI

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**APPENDIX A**

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Argued April 9, 1990

Decided October 26, 1990

No. 89-7182

CITIZENS FOR THE ABATEMENT OF  
AIRCRAFT NOISE, INC., *et al.*,

*Appellants*

v.

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY, *et al.*

ATTORNEY GENERAL,

*Intervenor*

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Appeal from the United States District Court  
for the District of Columbia

(D.C. Civil Action No. 88-03319)

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*Douglas Letter*, Attorney, Department of Justice, with  
whom *Stuart M. Gerson*, Assistant Attorney General, and  
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brief, for intervenor.

Before *WALD*, Chief Judge, and *MIKVA* and *BUCKLEY*,  
*Circuit Judges*.

Opinion for the court filed by *Circuit Judge BUCKLEY*.

Dissenting opinion filed by *Circuit Judge MIKVA*.

**BUCKLEY, Circuit Judge:** Citizens for the Abatement of Aircraft Noise challenge the constitutionality of certain conditions attached by Congress to the transfer of two federally owned and operated airports to a regional airport authority created by the Commonwealth of Virginia and the District of Columbia. Specifically, they contest the legitimacy of the Board of Review, composed entirely of members of Congress, which the Authority was required to establish as a specific condition to the transfer of the airports. Because we find that the Board is effectively an agent of Congress and that its functions are executive in nature, we conclude that the Board is prohibited by the constitutional doctrine of the separation of powers from carrying out those functions.

#### I. BACKGROUND

##### A. Legislative Background

The Washington, D.C., metropolitan area is served by two major airports, Washington National and Washington Dulles International. These are owned by the Federal Government and were operated by it from the time they were opened (in 1941 and 1962, respectively) until March 1987, when they were leased to the newly formed Metropolitan Washington Airports Authority ("MWAA" or "Authority"). Their history of federal ownership and control is unique, as all other civilian airports in the country are operated by local, state, or regional authorities. Because of the importance of National and Dulles to the economic development of Northern Virginia and the District of Columbia, there have been several unsuccessful attempts over the years to transfer control of the airports to local authorities. In 1984, a commission under the chairmanship of former Virginia Governor A. Linwood Holton issued a report that provided the necessary catalyst for the relinquishment of federal control.

The Holton Commission recommended that the airports be turned over to an independent regional authority to be established by the Commonwealth of Virginia and the District of Columbia. To this end, the Virginia Assembly passed legislation authorizing the creation of the Metropolitan Washington Airports Authority. See 1985 Va. Acts ch. 598. The District of Columbia followed suit. See D.C. Law 6-67, 32 D.C. Reg. 6,093, 7,393 (1985). These acts empowered the Authority to acquire the airports by lease or otherwise, to issue bonds, carry out expansion plans, and perform other acts necessary to the task of administering the airports. Neither the Virginia nor the D.C. legislation provided for a special board with the power to veto the actions of the Authority and its governing board.

At about the same time, Congress also began work on legislation to implement the Holton Commission's recommendations and, on April 11, 1986, the Senate approved a bill that provided for a straightforward transfer of control over the airports to the Authority. 132 Cong. Rec. 7,263-81 (1986). Subsequently, in the course of the House Subcommittee on Aviation's consideration of the measure, its staff prepared drafts of three proposals for the establishment of a board composed of members of Congress that would have the power to review and disapprove actions taken by the new Authority.

Under the first proposal, Congress would create a "Federal Board of Review" having the power to veto Authority decisions. This board would consist of the Comptroller General plus three members appointed by the House and three by the Senate. The second proposal would require that the board be established by state law as a condition for the transfer of the airports to the Authority. Its congressional members, however, would continue to be appointed directly by their respective houses. Under the third proposal, the members would be selected by the Authority's Board of Directors from

names submitted by the congressional leadership and would serve in their individual capacities as representatives of the airports' users.

In an advisory letter addressed to the Subcommittee Chairman, Assistant Attorney General John R. Bolton ("AAG") expressed the view that the first approach was clearly unconstitutional, as it sought to establish a committee of Congress vested with the authority to take legislative action—in the form of a veto—without meeting the Constitution's Bicameralism and Presentment requirements, namely, that legislative acts be approved by both houses of Congress and presented to the President for his approval or veto. *See Letter from Asst. Att'y Gen. J. Bolton to Rep. N. Mineta*, at 1-2 (Aug. 6, 1986). Moreover, as at least some of the functions to be performed by the proposed board were "clearly operational" in nature, performance of them by members of Congress would violate the Constitution's Incompatibility and Appointments Clauses, which forbid officers of the United States from serving in Congress and require such officers to be appointed by the President. *Id.* at 2-3.

While the second proposal addressed some of these concerns by having the board created by state law rather than directly by Congress, the AAG concluded that this alternative was similarly flawed because Congress, through its agents, would still be exercising direct control over the operations of the airports. *Id.* at 5-7. The AAG, however, found the third proposal constitutionally acceptable, although not free from doubt. He reasoned that as the members would be representing their own interests as airport users, their membership on the board would not implicate separation-of-powers concerns. *Id.* at 7-8. Nevertheless, his letter suggested that efforts should be made to minimize the institutional role of Congress in the board's affairs, as the avoidance of constitutional difficulties turned on the board members' representing only their individual interests. *Id.* at 8.

This third proposal was adopted with minor modifications and was signed into law as the Metropolitan Washington Airports Act of 1986. 49 U.S.C. app. §§ 2451-2461 (Supp. V 1987) ("Airports Act"). The Airports Act authorized a long-term lease of National and Dulles Airports to the Authority created by Virginia and the District of Columbia. Under its terms, however, the Authority was required to establish a board of review composed entirely of members of Congress, with the power to veto certain actions of the Authority. 49 U.S.C. app. § 2456(f).

In response to this congressional action, Virginia and the District amended their respective statutes to empower the Authority to create such a board. 1987 Va. Acts ch. 665, § 5(5); D.C. Law 7-18 § 3(c)(2), 34 D.C. Reg. 3,805, 5,249 (1987). These acts, however, did not require the Authority to establish a review board, nor did they specify what its composition or powers would be in the event the Authority decided to create one. By contrast, the Airports Act not only required the Authority to establish the present Board of Review as a condition for the lease of the airports, but described its composition and powers in great detail:

The [Authority's] board of directors shall be subject to review of its actions . . . by a Board of Review of the Airports Authority. Such Board of Review shall be established by the board of directors and shall consist of the following, in their individual capacities, as representatives of users of the Metropolitan Washington Airports:

(A) two members [from each of two named House committees] from a list provided by the Speaker of the House;

(B) two members [from each of two named Senate committees] from a list provided by the President pro tempore of the Senate; and

(C) one member chosen alternately from members of the House of Representatives and members of the Senate, from a list provided by the Speaker of the House or the President pro tempore of the Senate, respectively.

49 U.S.C. app. § 2456(f)(1).

The Act required that the Board be granted the power to disapprove the following decisions of the Authority:

- (i) the adoption of an annual budget;
- (ii) the authorization for the issuance of bonds;
- (iii) the adoption, amendment, or repeal of a regulation;
- (iv) the adoption or revision of a master plan, including any proposal for land acquisition; and
- (v) the appointment of the chief executive officer.

*Id.* § 2456(f)(4). The Act then states that in the event the Board is

unable to carry out its functions under this subchapter by reason of a judicial order, the Airports Authority shall have no authority to perform any of the actions that are required by [subsection (f)(4)] to be submitted to the Board of Review.

*Id.* § 2456(h).

After the enactment of this legislation, the Secretary of Transportation entered into a lease with the Authority on March 2, 1987. Six months later its board of directors completed selection of the Board of Review from the lists submitted by the Speaker of the House of Representatives and the President pro tempore of the Senate. On March 13, 1988, the Authority adopted a Master Plan for the renovation of National and Dulles International Airports. On April 13, 1988, the Board of Review voted not to disapprove the Plan, which is now being implemented.

#### B. Procedural Background

On November 16, 1988, Citizens for the Abatement of Aircraft Noise and two of its individual members (collectively, "Citizens") filed this lawsuit seeking declaratory and injunctive relief. They sought an order declaring that the Board of Review's disapproval authority was unconstitutional, and an order prohibiting the Board from taking any action under the Airports Act and barring the Authority from taking any action that would have to be submitted to the Board pursuant to the Act.

Citizens argued that the Board of Review was unconstitutional on several grounds. First, they claimed, on the basis of *INS v. Chadha*, 462 U.S. 919 (1983), that its veto power represents "an extra-constitutional check on the execution of the law." *Citizens for the Abatement of Aircraft Noise v. Metropolitan Washington Airports Authority*, 718 F. Supp. 974, 983 (D.D.C. 1989) (internal quotes omitted). In *Chadha*, the Supreme Court struck down the provision in the Immigration and Nationality Act, 8 U.S.C. § 1254(e)(2), providing for the veto by either house of Congress of decisions of the Attorney General to allow particular deportable aliens to remain in the United States. The Court held that when Congress takes action that is legislative in character, it must meet the Bicameralism and Presentment requirements of the Constitution. See 462 U.S. at 951-59. Actions were deemed "legislative in character" if they affected the legal rights and responsibilities of persons outside the Legislative Branch. See *id.* at 952. Citizens argued that a Board veto, like the one-house veto, would be such a legislative act, and therefore, under *Chadha*, the Board could not constitutionally exercise such power in the absence of passage by both houses and presentation to the President.

Next, Citizens alleged that the functions of the Review Board are executive in nature, as they involve the opera-

tion of the airports. As such, the assumption of these powers by the members of Congress serving on the Board violated the doctrine of the separation of powers. 718 F. Supp. at 982. This doctrine, which is explained in *Bowsher v. Synar*, 478 U.S. 714, 726-27 (1986), prohibits legislative officers from performing executive functions. Finally, according to Citizens, the executive nature of the Board's functions means that members of Congress cannot serve thereon without violating the Incompatibility and Ineligibility Clauses. U.S. Const. art. I, § 6, cl. 2.

The MWAA questioned the justiciability of Citizens' claims on several grounds. On the merits, it challenged the view that the members of the Board were in fact beholden to Congress. The MWAA stated that the Act made the Board a separate entity whose members, unlike the Comptroller General in *Bowsher*, were not removable by Congress and hence not subject to its control; that the Authority was statutorily independent of the Federal Government, 49 U.S.C. app. § 2456(b)(1); and further, that the members of the Board served "in their individual capacities, as representatives of users of the Metropolitan Washington Airports." *Id.* § 2456(f)(1). The MWAA also asserted that the authority being exercised by the members was not, in any event, federal power: As the Authority and its creature, the Board of Review, were established in accordance with state law, no federal separation-of-powers question was raised.

The district court found that the claim was justiciable, but ruled for the defendants on the merits. 718 F. Supp. 974 (D.D.C. 1989).

## II. DISCUSSION

### A. Justiciability

As a threshold matter, we must consider whether this case is justiciable. Although the Authority has not pressed the issue on appeal, it is well established that a

court of appeals must first satisfy itself of its own jurisdiction, *sua sponte* if necessary, before proceeding to the merits. See *Liberty Mut. Ins. Co. v. Wetzel*, 424 U.S. 737, 740 (1976).

In the district court, the Authority argued that Citizens' claims were not ripe, that they had failed to exhaust their administrative remedies, and that they lacked standing to bring their constitutional claim. We agree with the district court that the first two issues warrant little discussion, and we find appellants' claims ripe and not precluded by the administrative exhaustion requirement substantially for the reasons given by the court.

We have little doubt, moreover, that appellants have alleged the distinct and palpable injury required to bring an action in federal court. To claim Article III standing, "[a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen v. Wright*, 468 U.S. 737, 751 (1984). Appellants' claim that they are adversely affected by noise, air pollution, and the risks of injury associated with flights in and out of National is not challenged. See 718 F. Supp. at 981. Furthermore, that harm is "fairly traceable" to the implementation of the Master Plan, which provides for a significant increase in air traffic, because only with the Board of Review in operation can the Authority carry it out. See *id.* Lastly, it is obvious that a favorable ruling will redress Citizens' alleged injuries, because if the Board's actions are invalidated, then, under the provisions of the Act, the Authority will be unable to implement the Plan and continue expansion.

Having concluded that appellants have demonstrated Article III standing for the reasons stated above, we do not address the independent basis for standing found by the district court.

## B. The Merits

As an initial matter, we must address appellees' contention that separation-of-powers principles do not apply to the Board of Review in the first instance. They argue that as the Board does not exercise federal power and is not a federal entity, federal separation-of-powers principles are inapplicable. *See Appellees' Brief at 34.* Appellees imply, moreover, that even if those principles might otherwise apply, it is now accepted that Congress may use its powers under the Property Clause to create conditions on grants of federal property and thus "to achieve indirectly objectives that it is not empowered to achieve directly." *See id.* at 28. We turn first to these contentions.

### 1. *Applicability of Separation-of-Powers Principles*

#### a. *Nature of Power Exercised by Board of Review*

Appellees' first argument for the non-applicability of separation-of-powers principles rests on the claim that the Board is not a federal entity and wields no federal powers. We will find that the Board wields federal power if we determine that it is "exercising significant authority pursuant to the laws of the United States." *Buckley v. Valeo*, 424 U.S. 1, 126 (1976). Although the Supreme Court enunciated this test in determining whether members of the Federal Election Commission were officers of the United States, we find the test equally applicable here, for the issue in both cases turns on whether the power wielded by a person or body has its source in federal authority.

The MWAA argues that because statutes of Virginia and the District of Columbia created the Authority and conferred on it the power to create the Board of Review, the latter is in fact a creature of state law. The Virginia and D.C. statutes, however, provide for none of the trou-

blesome characteristics of the Review Board, such as a membership limited to members of Congress and the power to veto major actions of the Authority. Rather, it is the federal Airports Act that defines the Board's character. *See 49 U.S.C. app. § 2456(f).* The MWAA contends, nevertheless, that the Board of Review exercises no federal power because it derives its authority from the bylaws of an independent regional entity and participates in decisionmaking functions that are common to local airport authorities throughout the country. *Appellees' Brief at 32.*

We find it irrelevant that the Board may be performing a function generally discharged by local authorities in other areas. The federal power includes the power to build, own, and operate airports. If the authority exercised by the Board over the operation of National and Dulles is derived from a federal source or exercised on behalf of the federal government, then separation-of-powers principles apply irrespective of the fact that the powers at issue are similar to those enjoyed by states or localities. Moreover, even though it is true, as the Authority asserts and the district court concluded, that Virginia and the District of Columbia could have walked away from the deal offered by Congress, their acceptance of the offer does not mean that the terms attached to it cannot result in an exercise of federal power. Nor is there any significance in the fact that the federal government was acting in a proprietary capacity when it required the Authority to create the Board as a condition to the lease of the airports. Whether Congress was legislating as sovereign or proprietor, any reservation of federal authority is subject to separation-of-powers constraints. *See Springer v. Government of the Philippine Islands*, 277 U.S. 189, 202-03 (1928) (whether government deals with property in sovereign or proprietary capacity, it "nevertheless acts in its governmental capacity").

In order to secure the lease of the airports that are its sole reason for existence, the Authority had to create a board with the composition and authority dictated by the federal statute:

The board of directors *shall* be subject to review of its actions and to requests, in accordance with this subsection, by a Board of Review of the Airports Authority. Such Board of Review *shall* be established by the board of directors and *shall* consist of the following . . . .

49 U.S.C. app. § 2456(f)(1) (emphasis added). It is thus clear to us that, once the deal was accepted, it is federal law that resulted in the establishment of the Board of Review with its particular composition and authority. If there were any doubt about the matter, the provision in the statute disabling the Authority from performing many of its critical functions in the event the Board of Review is invalidated by judicial order makes plain that the law functions to maintain a federally mandated presence in the operation of the airports. See 49 U.S.C. app. § 2456(h).

In this light, it is wholly unrealistic to view the Board of Review as solely a creature of state law immune to separation-of-powers scrutiny. The district court itself noted the Supreme Court's caution that "separation-of-powers analysis does not turn on the labelling of an activity, but rather focuses on the unique aspects of the congressional plan at issue and its practical consequences." 718 F. Supp. at 983 (quoting *Mistretta v. United States*, 109 S. Ct. 647, 665 (1989)) (internal quotes and citations omitted). The court failed to see, however, that the "practical consequences" of the current arrangement are to maintain in place by federal law a body composed exclusively of members of Congress that exercises operational control over the airports.

The district court thus begs the question when it concludes that separation-of-powers principles do not apply because Congress has not accreted powers to itself at the expense of the Executive, but rather has offered the airports to the Authority subject to conditions that the Authority, not Congress, has implemented. *See id.* at 986. As the Board exercises oversight responsibilities as a consequence of the Airports Act, separation-of-powers principles dictate that such oversight, like any exercise of federal power, be carried out in a manner consistent with the Federal Constitution.

*b. Whether Board of Review Provision Is Legitimate as Valid Exercise of Congress's Property Clause Powers*

In an argument based on the Supreme Court's decision in *South Dakota v. Dole*, 483 U.S. 203, 210-11 (1987), the MWAA maintains that the Board, as constituted and empowered, is nevertheless legitimate because it was created in the course of Congress's lawful exercise of its extensive power under the Property Clause to dispose of federal property. Even if Congress could not constitutionally establish the Board directly, this argument runs, it has the power under the Property Clause to achieve the same result indirectly.

In *South Dakota*, the Court upheld a federal law directing the Secretary of Transportation to withhold five percent of otherwise allocable federal highway funds from States that did not have a minimum drinking age of at least twenty-one years. South Dakota had argued that the law violated the Twenty-first Amendment's reservation of power over intoxicating liquors to the States. The Court ruled that even assuming that Congress lacked the authority, in light of the amendment, to legislate a national minimum drinking age directly, nonetheless its powers to spend for the "general Welfare" were broad enough to sustain the conditions. *See id.* at 206-09. Not-

ing that Congress's powers under the Property Clause, U.S. Const. art. IV, § 3, cl. 2, are as broad as those under the Spending Clause, *id.*, art. I, § 8, cl. 1, the Authority now suggests that Congress may circumvent the limitations on its authority imposed by the separation-of-powers doctrine by placing appropriate conditions on the transfer of government property. *See Appellees' Brief at 27-28.*

We believe the present case is distinguishable from *South Dakota*. It is well established that Congress may use its Spending Clause powers to advance policies that lie beyond the reach of its constitutional authority to legislate directly. *See United States v. Butler*, 297 U.S. 1, 66 (1936). Thus, as the Court reasoned in *South Dakota*, the "independent constitutional bar" on direct congressional action is not "a prohibition on the indirect achievement of objectives which Congress is not empowered to achieve directly." 483 U.S. at 210. Congress may make valid use of its Spending and Property Clause powers to achieve, through economic incentives, objectives that it might not be able to mandate directly. It does not follow, however, that Congress may use the same device to circumvent the functional constraints placed on it by the Constitution.

In the former case, the States help Congress achieve objectives beyond its immediate constitutional reach by agreeing themselves to legislate in areas where they constitutionally can legislate, but Congress cannot. They do this in exchange for an economic benefit provided by Congress in the exercise of its Spending (or Property) Clause powers. In the instant case, by contrast, Virginia and the District of Columbia cannot authorize Congress to exercise functions forbidden it by the Constitution. If federal power is wielded, then that power must be wielded in a constitutional manner. Thus, we conclude, *South Dakota* does not remove this case from separation-of-powers scrutiny.

## 2. Application of Separation-of-Powers Principles to Board of Review

Having concluded that separation-of-powers principles are applicable to this case, we must now determine whether the Board of Review operates in conformity with them.

In support of their argument that the Board's structure violates the basic requirement that Congress not perform executive functions, appellants make two claims that appear at first inconsistent. First, they argue that the Airports Act gives to a group under the control of Congress an executive function, namely, the power to oversee the Authority's management of the airports. *See Appellants' Brief at 30.* Appellants argue, at the same time, that the Act violates the Bicameralism and Presentment requirements enunciated in *Chadha* because it grants the Board a veto power over the Authority. *See id.* These claims appear inconsistent because the first assumes that the Board is performing an executive function, in violation of *Bowsher*, while the second assumes that the Board, in exercising its veto powers, is performing a legislative function without benefit of Bicameralism and Presentment, in violation of *Chadha*.

In reality these positions are not logically inconsistent but rather two sides of the same theoretical coin, by which Congress must either stay clear of executive decisions once a legislative grant of authority has been made or intervene only with new, validly enacted law. *See Chadha*, 462 U.S. at 954-55 (once Congress confers power on the Executive, it must "abide by its delegation of authority until that delegation is legislatively altered or revoked"). Here, there is no claim that the actions of the Board of Review would satisfy the Bicameralism and Presentment requirements enunciated in *Chadha*. But because we find that the operation of the Board of Review partakes of an executive function, and that the Board is in essence a congressional agent, we invalidate

it under the first of appellants' claims without expressing a view on the second.

*Bowsher*, we believe, is the relevant touchstone for what constitutes an executive function. In *Bowsher*, the Supreme Court focused on the fact that the Balanced Budget and Emergency Deficit Control Act of 1985 contemplated that the Comptroller General would exercise independent judgment and evaluations with respect to the execution of various budget-cutting measures. See 478 U.S. at 732-33. The Court determined, first, that "because Congress has retained removal authority over the Comptroller General, he may not be entrusted with executive powers." *Id.* at 732. It then found the authority vested in the Comptroller General to be unconstitutional because, although an agent of Congress, he was required to exercise responsibilities of an executive nature.

In this case, the Board is given disapproval powers over the adoption of an annual budget, the authorization of the issuance of bonds, the adoption, amendment, or repeal of any regulation, the adoption or revision of a master plan for airport expansion, as well as the appointment of the MWAA's chief executive officer. See 49 U.S.C. app. § 2456(f)(4)(B). This authority over key operational decisions is quintessentially executive.

We must now address whether the Board of Review is controlled by Congress, and again *Bowsher* will be our guide. The Authority argues, and the district court concluded, that although the Board was composed of members of Congress, it was nonetheless independent of Congress. See 718 F. Supp. at 984-85. In reaching that conclusion, the court cited the provision of the Airports Act which states that the members of the Board will act "in their individual capacities, as representatives of [the airports'] users," 49 U.S.C. app. § 2456(f)(1), and found, *inter alia*, that Congress did not have the power

to remove members of the Board of Review because the Act was silent on the matter. See *id.* at 983-84.

We believe the court misjudged the extent to which members of the Board must, as a practical matter, be seen as representatives of Congress rather than of the airports' general users. Eight of the nine Board members are required by the Act to be members of the committees that have direct jurisdiction over commercial aviation, and all of them are selected from lists submitted by the presiding officers of the two houses of Congress. These provisions reflect a direct congressional interest in the operational decisions of the Authority that the members of its Review Board, as sitting members of Congress, will find it difficult to ignore.

The district court dismissed these ties between the Board and Congress by pointing to precedents for appointments being made from similarly limited lists. See 718 F. Supp. at 984 & n.16. Specifically, the district court noted that the Supreme Court "expressed no qualms" about the fact that the Comptroller General was appointed from a list of three individuals provided by the Speaker and the President pro tempore, citing *Bowsher*, and that the Judicial Conference of the United States submits the names of six judges for three appointments to the United States Sentencing Commission, citing *Mistretta*. *Id.* These comparisons are unpersuasive.

First, the district court erred in its reliance on *Mistretta*. The portion of that case cited by the court, see *id.*, dealt not with whether Congress had invaded the Executive's domain by reserving to itself excessive control over the selection and removal process, but rather with the distinct question of whether the Executive's appointment and removal authority over members of the Sentencing Commission threatened the independence of the Judiciary. See 109 S. Ct. at 673-74. Second, in neither of the examples cited by the district court did the names on the lists submitted consist of members of

Congress. In the instant case, the lists contained exactly that—the names of individuals who will continue to serve as full-time members of the Senate or the House of Representatives and, in the case of all but one of them, on committees directly concerned with the formulation of congressional policies affecting commercial aviation. Given these continuing institutional ties, we are unable to conclude that the members of the Board are truly independent and that they can realistically be expected to act as representatives of users other than those with whom they work on a daily basis on Capitol Hill.

Moreover, contrary to what the district court found, Congress does have the power to remove members of the Board. The Act specifically requires that the Board "shall consist of" members of specified committees of the House and Senate. As each house has the right to remove any of its members from any committee at any time, Congress has the power to disqualify any one or more of them from further service on the Board. It could be argued, of course, that Congress would be unlikely to discipline members of the Review Board by removing them from their qualifying committees. Nevertheless, as the Supreme Court noted in *Bowsher*, in response to the objection that Congress was unlikely to remove the Comptroller General,

[t]he separated powers of our Government cannot be permitted to turn on judicial assessment of whether an officer exercising executive power is on good terms with Congress. . . . In constitutional terms, the removal powers over the Comptroller General's office dictate that he will be subservient to Congress.

478 U.S. at 730.

We thus conclude that the Board of Review as currently established violates the constitutional prohibition, articulated in *Bowsher*, against legislative agents per-

forming executive functions. As we invalidate the Board on these grounds, we do not reach appellants' claims based on the Incompatibility and Ineligibility Clauses.

### III. CONCLUSION

We have determined that Citizens' claims are justiciable, and that the Board of Review, as currently constituted, unconstitutionally vests executive functions in an agent of Congress. The judgment of the district court is reversed and the case remanded with instructions to grant Citizens' request for declaratory and injunctive relief. We direct, however, that actions taken by the Board to this date not be invalidated automatically on the basis of our decision. See *Buckley v. Valeo*, 424 U.S. at 142 (past acts of invalidly constituted Commission accorded "*de facto validity*").

*It is so ordered.*

MIKVA, *Circuit Judge*, dissenting: The court today strikes down an important governing authority and tells the U.S. Congress that it may not pass legislation permitting the federal government and the governments of Virginia and the District of Columbia to share responsibility for the operation of Washington's two major airports. Ignoring the time-honored canons that counsel restraint in constitutional interposition, the court destroys the carefully crafted plan for governance that Congress devised, creating an obstacle course to federalism that no Supreme Court precedent requires. I would affirm the district court's decision granting summary judgment in favor of the Metropolitan Washington Airports Authority (the "Authority"). *Citizens for the Abatement of Aircraft Noise, Inc. v. Metropolitan Washington Airport Authority*, 718 F. Supp. 974 (D.D.C. 1989).

## I.

The majority's fundamental error is its failure to honor the cardinal rule of statutory interpretation that courts should construe statutes so as to avoid rather than implicate constitutional questions. *See Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 348 (1936) (Brandeis, J., concurring) ("When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." (citation omitted)); *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 500 (1979) (explaining that "an Act of Congress ought not be construed to violate the Constitution if any other possible construction remains available"). Indeed, such a rule of construction has long influenced this Circuit's jurisprudence. *See, e.g., Galliano v. U.S. Postal Service*, 836 F.2d 1362, 1369 (D.C. Cir. 1988); *Hastings v. Judicial Conference of U.S.*, 829 F.2d 91, 101-02 (D.C. Cir. 1987), cert. denied,

485 U.S. 1014 (1988); *Loveday v. FCC*, 707 F.2d 1443, 1459 n.24 (D.C. Cir.), cert. denied, 464 U.S. 1008 (1983). As the Supreme Court has stated specifically with regard to separation of powers challenges: "When this Court is asked to invalidate a statutory provision that has been approved by both Houses of the Congress and signed by the President, . . . it should only do so for the most compelling constitutional reasons." *Mistretta v. United States*, 488 U.S. 361, 384 (1989) (quoting *Bowsher v. Synar*, 478 U.S. 714, 736 (1986) (Stevens, J., concurring)). I find no such "compelling constitutional reasons" in this case to justify the majority's departure from the traditional rule of restraint.

## II.

Congress created neither the Authority nor its Board of Review (the "Board"). Both of those entities were created by the actions of Virginia and the District of Columbia. The court decides, however, that because the federal Airports Act (the "Act") describes the Board's composition and its power to veto certain Authority actions, the Board is a federal entity wielding federal powers, subject to separation of powers constraints. Although my primary disagreement with the court concerns its actual application of separation of powers principles to the facts of this case, I also question the court's characterization of the Board as a federal entity. It is certainly possible to view the Board as the district court did: The Airports Act authorizes the Secretary of Transportation to lease Dulles and National Airports to "a properly constituted independent airport authority created by the Commonwealth of Virginia and the District of Columbia," 49 U.S.C. app. §§ 2452(a), 2454(a) (1988), and establishes certain conditions concerning the Board of Review that must be contained within the lease. 49 U.S.C. app. § 2456(f), (h). Both the Commonwealth of Virginia and the District of Columbia passed the requisite enabling legislation for the regional Authority, whose by-

laws in turn establish the Board of Review and define its powers and composition. The fact that the federal Act authorizing the transfer of the airports to the Authority contemplates the Board's creation does not alter the Board's fundamental state parentage. If the Board derives its power from state law, then separation of powers principles—at least those that divide and allocate the sovereign power of the federal government along the three branches—would not constrain its actions.

### III.

Even assuming, however, that the Board of Review is a federal entity exercising federal power, I do not believe that it violates constitutional separation of powers principles. The court, adopting *Bowsher* as “the relevant touchstone,” finds the Board unconstitutional because it exercises “quintessentially executive” functions while under the control of Congress. Maj. Op. at 15. The court’s conclusion that the Board is controlled by Congress rests on: (1) its concern about the appointment of legislators to the Board from lists provided by congressional leaders; and, most importantly, (2) Congress’ alleged possession of removal power. I examine each concern in turn.

#### A. The Appointment Process

Under Article IV, Section 1 of the Authority’s bylaws and Section 2456(f)(1) of the Act, the Authority’s board of directors is empowered to establish a nine-member Board of Review composed of two members each from the House Appropriations Committee, the House Public Works and Transportation Committee, the Senate Appropriations Committee, and the Senate Commerce, Science and Transportation Committee, as well as one additional member of the House or Senate. The board of directors appoints the members from lists provided by the Speaker of the House and the President *pro tempore* of the Senate.

The Board of Review members serve in their “individual capacities, as representatives of [the airports’] users.” 49 U.S.C. app. § 2456(f)(1); Bylaw Article IV, Section 1.

The mere fact that congressional leaders submit lists of proposed Board candidates to the Authority does not, as the district court noted, raise constitutional concerns. See *Citizens for the Abatement of Aircraft Noise*, 718 F. Supp. at 984 & n.16. The Supreme Court has previously confronted such limited lists without suggesting that they violate separation of powers principles. See *Bowsher*, 478 U.S. at 727 (President nominates Comptroller General from list of three individuals recommended by Speaker of the House and President *pro tempore* of the Senate); *Mistrutta*, 488 U.S. at 368, 410 n.31 (Judicial Conference submits list of six judges, from which President appoints at least three to the Sentencing Commission).

Instead, what troubles the majority is the Board’s composition. The court essentially holds that, because Board members also serve on congressional committees “directly concerned with the formulation of . . . policies affecting commercial aviation,” their decisions with respect to the Authority will be dictated by congressional goals and interests. See Maj. Op. at 16-17. I disagree with the court’s assertion that members of congressional transportation and appropriations committees may not constitutionally serve in their individual capacities as representatives of airport users. In *Mistrutta*, the Supreme Court found no absolute constitutional prohibition against federal judges serving as members of the United States Sentencing Commission, a body alleged to exercise legislative authority through its promulgation of sentencing guidelines. See 488 U.S. at 383-84, 404. The Court’s analysis of the judges’ dual responsibilities is particularly illuminating:

The judges serve the Sentencing Commission not pursuant to their status and authority as Article III judges, but solely because of their appointment by

the President as the Act directs. Such power as these judges wield as Commissioners is not judicial power; it is administrative power derived from the enabling legislation. . . . [T]he judges, uniquely qualified on the subject of sentencing, assume a wholly administrative role upon entering into the deliberations of the Commission.

*Mistretta*, 488 U.S. at 404. The Court's reasoning in *Mistretta* is directly applicable here to the Board of Review: members of Congress, particularly qualified on the subjects of commercial aviation and institutional operations, serve in an individual administrative—not legislative—capacity when they review the Authority's actions.

It is gratuitous to assume that committee membership automatically leads to congressional control. We should not presume that Board members will tailor their decision-making to congressional desires when there is no statutory requirement that Board members consult with any committee of Congress, or that the Board's actions be subject to any kind of congressional oversight. The Board of Review's appointment process simply violates no constitutional separation of powers principles heretofore articulated.

#### B. Removal Power

As the court itself recognizes, locating removal power is central to separation of powers analysis. *See Bowsher*, 478 U.S. at 727 (“The critical factor [in determining that the Comptroller General is subservient to Congress] lies in the provisions of the statute . . . relating to removability.”); Maj. Op. at 17. In *Bowsher*, a federal statute provided that the Comptroller General could be removed for a variety of causes, but only through congressional impeachment or resolution. Here, by contrast, the federal Act and the Authority's bylaws are silent as to removal procedures for Board of Review members. De-

spite the absence of a factual predicate, the court nevertheless analogizes this case to *Bowsher*. It notes that the Board is composed of members of specified congressional committees, and concludes that Congress effectively exercises removal power over the Board through its ability to “remove any of its members from any committee at any time.” Maj. Op. at 17. I believe that this interpretation is seriously flawed.

First, the court relies heavily on language from *Bowsher* stating that constitutionality cannot turn on judicial assessments of whether an officer “is on good terms with Congress”; the court also quotes *Bowsher*'s conclusion that “the removal powers over the Comptroller General's office dictate that he will be subservient to Congress.” Maj. Op. at 17 (quoting *Bowsher*, 478 U.S. at 730). The clear import of the court's quotation is that the Board members stand in the same “subservient” relationship to Congress as the Comptroller General in *Bowsher*. As noted above, however, the relevant statutory schemes are strikingly different: whereas Congress was authorized to remove the Comptroller General by a variety of methods and for a variety of causes, the Airports Act vests no removal power in Congress whatsoever. In the quoted excerpt from *Bowsher*, Chief Justice Burger was simply responding to the dissent's argument that Congress was unlikely ever to *exercise* its (clearly possessed) removal power; he did not have before him a situation, like this, where the very locus of the removal power was a matter of dispute. Thus, the court's citation of *Bowsher* is both misleading and analytically unsound.

Second, I disagree with the court's analysis of the removal power. As the district court noted, well-established rules of statutory construction suggest that, “‘absent a specific provision to the contrary, the power of removal from office is incident to the power of appointment.’” *Citizens for the Abatement of Aircraft Noise*, 718 F. Supp. at 984 & n.14 (quoting *Carlucci*

*v. Doe*, 488 U.S. 93, 99 (1988) (internal quotation omitted)). Under this interpretation, the Authority's board of directors—not Congress—would possess removal power over the Board of Review. *See also* Metropolitan Washington Airports Authority Resolutions Nos. 87-12, 87-27 (establishing that “the Board of Directors may remove for cause an appointee to the Board of Review prior to the conclusion of his term”).

Third, the court’s interpretation is unpersuasive even on its own terms. The statute provides only that the Board of Review shall “consist” of members of the specified congressional committees. 49 U.S.C. app. § 2456(f) (1). In light of the *Ashwander* principle, cited above, that courts should construe statutes to avoid constitutional infirmities where possible, we should not read the Act to prohibit a Board member who serves on the appropriate committee at the time of her appointment and later leaves the committee—or even loses a bid for reelection—from serving out her full Board term. The fact that the standard term of service on the Board of Review is six years, *see* 49 U.S.C. app. § 2456(f) (2), thus spanning three Congresses, further supports the notion that a Board member’s tenure need not correlate with his or her congressional status.

#### IV.

I would affirm the district court’s grant of summary judgment for the Authority. Unlike the panel, I find no constitutional infirmities in the appointment process for Board members: *Bowsher* and *Mistretta* addressed similar procedures without invalidating them, and the mere fact that members of Congress serve on the Board in their individual capacities does not present a constitutionally adequate distinction. Nor do I find any problems with removal power over Board members: the statutory silence in this case is very different from the explicit authority possessed by Congress in *Bowsher*, and plausible alternative constructions exist under which removal power

rests with the Authority’s board of directors. The declaratory and injunctive relief the court today orders—preventing the Authority from taking any actions (such as bond issuances, or adoption of a budget or master plan) for which Board of Review approval is statutorily required—thwarts local control over and planning for the airports. I see no reason for this court to reach the drastic result of invalidating a delicately-balanced and innovative institution of federalism on separation of powers grounds when plausible—indeed more plausible—alternative interpretations would sustain the Board of Review as constitutional.

**APPENDIX B**

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 89-7182

CITIZENS FOR THE ABATEMENT OF  
AIRCRAFT NOISE, INC., *et al.*,  
v. *Appellants,*

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY, *et al.*,  
*Appellees,*  
UNITED STATES OF AMERICA,  
*Intervenor.*

BEFORE: Wald, Chief Judge; Mikva and Buckley,  
Circuit Judges

**ORDER**

[Filed Dec. 6, 1990]

Upon consideration of the Unopposed Motion of Appellees Metropolitan Washington Airports Authority, et al., for a Stay of Mandate and the Effective Date of Opinion and Order of this court Pending Petition for Writ of Certiorari, it is

ORDERED, by the Court, that the issuance of the mandate and effective date of the Court's Opinion and order dated October 26, 1990 are stayed for a period of seven days from the final disposition of any timely filed Petition for a Writ of Certiorari or a petition for rehearing and/or suggestion for rehearing *en banc* filed in this Court or to December 12, 1990, should none of such petitions or suggestion be filed.

*Per Curiam*  
FOR THE COURT:  
CONSTANCE L. DUPRE  
Clerk

By /s/ Robert A. Bonner  
ROBERT A. BONNER  
Deputy Clerk

**APPENDIX C**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 88-3319

CITIZENS FOR THE ABATEMENT OF  
AIRCRAFT NOISE, INC., *et al.*,  
v. *Plaintiffs,*

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY, *et al.*,  
*Defendants.*

**MEMORANDUM OPINION AND ORDER**

The Supreme Court's recent separation of powers jurisprudence has been populated by an array of novel situations. Within the last few years, the Court has upheld the constitutionality of a Sentencing Commission within the Judicial Branch composed of judges and others appointed by the President and charged with the duty of formulating guidelines for sentencing of federal offenders, *Mistretta v. United States*, 109 S. Ct. 647 (1989); has rejected a challenge to an independent counsel located within the Judicial Branch to investigate and prosecute crimes committed by Executive Branch officials, *Morrison v. Olson*, 108 S. Ct. 2597 (1988); and has approved a law allowing a federal agency to adjudicate state law counterclaims arising in connection with administrative proceedings, *Commodity Futures Trading Commission v. Schor*, 478 U.S. 833 (1986).

This case features yet another unusual institution. In transferring two federally-owned airports to an interstate authority, Congress required that the lease describ-

ing the transfer provide for a review board composed of nine members of Congress with veto power over the state authority. The compacting states agreed to this condition and created the review board. The Court is now called upon to determine whether the federal statute authorizing the transfer of the airports violates the Constitution. For the reasons articulated below, the Court concludes that it does not.

### I. Background

Three major commercial airports serve the Washington, D.C. area. The oldest is Washington National Airport (National), which was opened in 1941 just across the Potomac River from the District of Columbia in Virginia. Baltimore-Washington International Airport (BWI), formerly known as Baltimore Friendship Airport, is situated halfway between the District of Columbia and Baltimore, Maryland in the Maryland suburbs. Washington Dulles International Airport (Dulles), located in the suburbs of Virginia, began operations in 1962. Although every other commercial airport in the United States is operated by a regional, state or local authority, National and Dulles were placed under the ownership and control of the federal government.<sup>1</sup> The Federal Aviation Administration (FAA), a component of the Department of Transportation, undertook this responsibility.

Ever since the two airports opened, plans to extricate National and Dulles from federal control have surfaced. None succeeded. In June 1984, however, the combination of rising federal budget deficits and the need for immediate and significant improvements of the facilities at National and Dulles led Secretary of Transportation Elizabeth Dole to form an advisory commission composed of public leaders and aviation officials to explore the transfer issue. On December 18, 1984, the Holton Commis-

<sup>1</sup> BWI, for example, is owned by the State of Maryland.

sion, named after its Chairman, former Virginia Governor A. Linwood Holton, Jr., issued a report whose main recommendations were (1) that National and Dulles be transferred to a single independent public authority with the ability to issue tax-exempt bonds to raise revenue for capital improvements; (2) that the transfer should be effected by means of a long term lease; and (3) that the new entity should be administered by a governing board made up of non-political members appointed by local officials. See Plaintiffs' Exhibit (Pl. Ex.) 2.

The momentum generated by the Holton Commission's report spurred legislative activity on two fronts. On April 3, 1985 the Governor of Virginia approved a law authorizing creation of a regional airports authority along the lines suggested by the Holton Commission to acquire National and Dulles from the federal government. 1985 Va. Acts ch. 598. Almost-identical legislation was passed by the City Council of the District of Columbia; it was signed by the Mayor on October 9, 1985 and became effective on December 3, 1985. D.C. Law 6-67 (1985). In the meantime, the Congress was also taking action. A bill was introduced in the Senate on April 26, 1985 conveying the Reagan Administration's proposal for transferring National and Dulles. See 131 Cong. Rec. 9607 *et seq.* Hearings were held before the Senate Committee on Commerce, Science and Transportation in June and July of 1985, and the version of the bill that was approved by the committee embodied the recommendations of the Holton Commission "[i]n all significant respects." S. Rep. No. 193, 99th Cong., 1st Sess. 2 (1985). The measure was debated in, amended by and passed the full Senate on April 11, 1986. 132 Cong. Rec. 7276.

The focus then shifted to the House, where the Committee on Public Works and Transportation held its own hearings in June 1986. Shortly thereafter, however, the Department of Transportation sought guidance from the

Justice Department concerning several proposals to create a board, whose members would be drawn from the House and Senate, with veto power over certain decisions of the airports authority. The Assistant Attorney General for Legislative and Governmental Affairs, John R. Bolton, issued a letter opinion discussing the alternatives and concluding that one of the three was constitutional. Pl. Ex. 3. A new bill, now containing a provision for a Congressional review board, passed the Senate on October 3, 1986 and the House on October 15, 1986 as part of an appropriations rider. See 132 Cong. Rec. S14,862-64 & H11098-106 (daily ed.). After being signed by the President, the Metropolitan Washington Airports Act of 1986 (the Airports Act or the Act) became law.<sup>2</sup>

## II. The Airports Act

Concluding that National and Dulles "constitute an important and growing part of the commerce, transportation, and economic patterns of the Commonwealth of Virginia, the District of Columbia, and the surrounding region" and that the federal government had a "continuing but limited interest" in the two airports, § 2451(1) & (3), Congress passed the Airports Act to

authorize the transfer of operating responsibility under long-term lease of the two [airports] as a unit . . . to a properly constituted independent airport authority created by the Commonwealth of Virginia and the District of Columbia, in order to achieve local control, management, operation, and development of these important transportation assets.

§ 2452(a). To that end, the Act authorizes the Secretary of Transportation to enter into a 50-year lease for the

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<sup>2</sup> Pub. L. No. 99-500, 100 Stat. 1783-373, reenacted in Pub. L. No. 99-591, 100 Stat. 3341-376. For simplicity, references to specific provisions of the Act, which is codified at 49 U.S.C. app. §§ 2451-2461, will be cited as "§ —" or "section —."

transfer of the airports to the aforementioned Airports Authority and states that the lease "shall provide" for the payment of \$3 million per year from the Authority to the United States Treasury. § 2454(a) & (b).<sup>3</sup> In addition, the Act provides that the Airports Authority "shall agree, at a minimum" to certain "terms and requirements" contained in the lease. § 2454(c). Among other things, the Authority is required to operate National and Dulles "as a unit," to use the property only for airport purposes, to adhere (with certain exceptions) to all applicable FAA regulations, and to assume all rights, liabilities and obligations of National and Dulles. *Id.*

Section 2456 of the Act is entitled "Airports Authority," and its provisions lie at the heart of the instant case. The section begins:

The Airports Authority shall be a public body corporate and politic, having the powers and jurisdiction as are conferred upon it jointly by the legislative authority of the Commonwealth of Virginia and the District of Columbia . . . but at a minimum meeting the requirements of this section.

§ 2456(a).<sup>4</sup> It provides that the Airports Authority shall be (1) "independent" of Virginia, the District of Columbia and the federal government and (2) "a political subdivision constituted solely to operate and improve both [National and Dulles] as primary airports serving the Metropolitan Washington area." § 2456(b). In section 2456(c), the Authority is granted general authority to operate and is empowered to "acquire, maintain, improve, operate, protect, and promote" the two airports; to issue bonds; to acquire real and personal property; to

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<sup>3</sup> The Act also allows for extension of the term of the lease. § 2459.

<sup>4</sup> In another section, the Act permits the State of Maryland to enter an agreement to include BWI in the Authority. § 2452(b).

levy fees or other charges; and to make agreements with employee organizations. Whenever the Authority takes an action "changing, or having the effect of changing, the hours of operation of or types of aircraft serving either of the [airports]," it must do so by regulation. § 2456(g).

The Authority is administered by an 11-member Board of Directors. § 2456(e)(1). Five are appointed by the Governor of Virginia, three by the Mayor of the District of Columbia, two by the Governor of Maryland, and one by the President with the advice and consent of the Senate. *Id.* Members (who serve staggered, six-year terms) are prohibited from holding elective or appointed office, may not receive compensation for their service, and must (with the exception of the member appointed by the President) reside within the Washington Standard Metropolitan Statistical Area. § 2456(e)(2) & (3). The Chairman is chosen by majority vote of all members. § 2456(e)(1).

The Act also provides that the Board of Directors "shall be subject to review of its actions and to requests" by a Board of Review, which "shall be established by the Board of Directors." § 2456(f)(1). The Board of Review consists of (1) two members from both the House Committee on Public Works and Transportation and the Committee on Appropriations, chosen from a list provided by the Speaker of the House; (2) two members from both the Senate Committee on Commerce, Science and Transportation and the Committee on Appropriations, from a list provided by the President *pro tempore* of the Senate; and (3) one member from the House of Representatives and Senate as a whole, from lists provided by the Speaker and the President *pro tem.* *Id.* Members from the Congressional committee serve staggered, six-year terms, while the "at large" member (whose seat alternates between the House and the Senate) serves a two-year term. § 2456(f)(2). No Senator or Represen-

tative from Virginia or Maryland, nor the delegate from the District of Columbia, may serve on the Board of Review. § 2456(f)(1). The Act states that the members serve "in their individual capacities, as representatives of users of [National and Dulles]." *Id.*

The Airports Act also describes the parameters of the relationship between the Board of Review and the Board of Directors. Whenever, for example, the Board of Directors seeks to adopt a budget, issue bonds, adopt, amend or repeal a regulation, adopt or revise a master plan, or appoint a chief executive officer, it must submit that action for approval by the Board of Review. § 2456(f)(4).<sup>5</sup> In addition, Board of Review members may participate as nonvoting members in meetings of the Board of Directors and may request the Authority to vote or report on any matter related to the airports. § 2456(f)(5) & (6). Finally, the Act states that, if the ~~Board~~ of Review "is unable to carry out its functions under this subchapter by reason of a judicial order," the Board of Directors "shall have no authority to perform" any of the five actions that they are required to submit to the Board of Review for approval. See § 2456(h).<sup>6</sup>

### III. Developments Since Passage of the Act

The Secretary of Transportation and the Airports Authority entered into a lease for the transfer of National and Dulles on March 2, 1987, *see* Defendants' Exhibit (Def. Ex.) 3, and the Authority adopted by-laws to gov-

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<sup>5</sup> If the Board of Review does not disapprove the action within 30 days, it takes effect; if an action is disapproved, the Board of Review must state the reasons for its decision. *Id.*

<sup>6</sup> The Act also contains a separability provision:

Except as provided in section 2456(h) of this title, if any provision of this subchapter or the application thereof to any person or circumstance, is held invalid, the remainder of this subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

ern its operations two days later. Def. Ex. 4. Thereafter, Virginia and the District of Columbia enacted laws, on April 8, 1987 and June 1, 1987 respectively, amending the legislation that they originally passed authorizing the Airports Authority. *See* 1987 Va. Acts ch. 665; D.C. Law 7-18 (1987). On June 3 and September 2, 1987, the Board of Directors selected the members of the Board of Review from lists provided by the Speaker of the House and the President *pro tem* of the Senate. *See* Pl. Exs. 9 & 10.<sup>7</sup>

The Authority proposed a Master Plan for the renovation of National and Dulles in October 1987. After receiving comments from the public, *see, e.g.*, Pl. Ex. 17, the Board of Directors adopted a resolution approving the Plan on March 13, 1988. Def. Ex. 7. At a regular meeting held on April 13, 1988, the Board of Review discussed the Plan and voted not to disapprove it. Pl. Ex. 18. The Authority has begun to implement the Plan since that time.

#### IV. The Instant Case

This lawsuit was filed on November 16, 1988. Plaintiffs are the Citizens for the Abatement of Aircraft Noise, Inc. (CAAN), and two of its members, John W. Hechinger, Sr. and Craig H. Baab. A non-profit organization of citizens and groups, CAAN seeks to achieve "balanced service at the [Washington, D.C.] area's three airports" and to "reduce aircraft operations at Washington National Airport, and alleviate the noise, safety problems and air pollution that result from such operations." Complaint ¶ 3. Naming the Airports Authority and the Board of Review as defendants, plaintiffs contend that the power of the Board of Review found in section 2456 (f) (4) to disapprove actions of the Authority violates

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<sup>7</sup> The House members are William Lehman, Silvio O. Conte, John Paul Hammerschmidt, Norman Y. Mineta and Dan Rostenkowski; the Senate members are Robert C. Byrd, Nancy L. Kassebaum, Ted Stevens and Ernest F. Hollings. *Id.*

the bicameralism requirement of Article I, §§ 1 and 7 of the Constitution, the Presentment Clauses of Article I, § 7, clauses 2 and 3, and the doctrine of separation of powers. Complaint ¶ 22. Plaintiffs seek a declaratory judgment and injunctive relief enjoining the Board of Review from taking any actions under the Act and forbidding the Airports Authority from taking any action (including implementation of the Master Plan) that it ordinarily would submit for approval of the Board of Review. *Id.* at 9. Defendants filed their answer to the complaint on December 16, 1988; cross-motions for summary judgment followed.<sup>8</sup>

#### V. Discussion

##### A. Threshold Arguments

Defendants maintain that this case should be dismissed for lack of jurisdiction because plaintiffs' lawsuit is not ripe for judicial review, because plaintiffs have failed to exhaust their administrative remedies and because plaintiffs lack standing to assert their claims. None of these arguments has merit.

Defendants' first two contentions warrant little discussion. With respect to ripeness, they note that, although plaintiffs allege in this suit that the Board of Review's veto power over the Authority is unconstitutional, the Board of Review has never exercised its power to plaintiffs' detriment. Defendants therefore argue that "there is no confrontation requiring judicial intervention" and that plaintiffs' case "lacks the concreteness necessary to establish ripeness" because it rests on speculation that the Board of Review may one day veto an action of the Authority and cause them harm. Motion for Summary Judgment at 13. The Court must disagree. While the Board of Review has not disapproved an action to plain-

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<sup>8</sup> The parties are to be commended for the high caliber of the briefs that they have submitted.

tiffs' detriment, that does not preclude a showing of ripeness. To the contrary, this case is as ripe as it ever will be. Congress has passed a law establishing an Airports Authority and a Board of Review. Plaintiffs maintain that one aspect of the law—the veto power wielded by the Board of Review over the Authority—violates several provisions of the Constitution. Defendants nowhere suggest, nor can the Court discern, how the particular manner in which the veto power is exercised will affect the constitutionality *vel non* of the body that exercises it.<sup>9</sup> This is also not a situation where the possibility of a veto is abstract or ephemeral, for the Board of Review has already acted to disapprove one resolution passed by the Board of Directors. *See Pl. Ex. 11.*

Citing *Williamson County Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985) and *McKart v. United*

<sup>9</sup> Because plaintiffs challenge one discrete provision of the Airports Act, this is not a case like *Hastings v. Judicial Conference of the United States*, 770 F.2d 1093, 1101 (D.C. Cir. 1985), cert. denied, 477 U.S. 904 (1986), in which the court was asked "to pass on the constitutionality of an entire Act of Congress that vests in an entity a host powers." Nor, given that Congress has already enacted the veto provision under attack, is this a case like *Brown v. Hotel & Restaurant Employees & Bartenders International Union Local 54*, 468 U.S. 491, 512 (1984), *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1018-19 (1984), or *Muller Optical Co. v. EEOC*, 743 F.2d 380, 387-88 (6th Cir. 1984), all of which involved potential conflicts that could have been avoided. Finally, defendants' emphasis on "concreteness" is misplaced, since (as their own cases make clear) that requirement arises under the law of standing, not under the ripeness doctrine. *See Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 485-86 (1982) (concreteness arises from "proceedings commenced by one who has been injured in fact"; plaintiffs lacked standing because they had not alleged an *injury of any kind*) (emphasis in original); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 804 (1985) ("federal standing requires an allegation of a present or immediate injury in fact, where the party requesting standing has 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues'") (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

*States*, 395 U.S. 185 (1969), defendants next assert that plaintiffs have failed to exhaust their administrative remedies because plaintiffs are participants in an ongoing study of noise problems being conducted by the Authority and will be able to comment on any recommendations that are proposed. Motion at 16 n.12. The cases cited by defendants are inapposite, however. In *Williamson*, a land-owner alleged that a local zoning law amounted to an unconstitutional taking of property under the Fifth Amendment but had not obtained a final decision that he would not receive a variance. The Supreme Court held that exhaustion was necessary because of "the very nature of the inquiry required by the Just Compensation Clause"—an inquiry examining "the economic impact of the challenged action and the extent to which it interferes with reasonable investment-backed expectations." 473 U.S. at 190-91. The instant case requires none of those fact-bound determinations. *McKart* is even weaker authority, for there the Court rejected the government's claim that the exhaustion doctrine barred a *criminal* defendant from presenting a defense that he did not raise in the administrative context. 395 U.S. at 196-97. But even were exhaustion appropriate, defendants' claim that the noise study is "specifically designed to address the alleged injuries of which [plaintiffs] complain," Motion at 16 n.12, is only partially correct. While plaintiffs are concerned with reducing noise at National and Dulles, they also contend that the exclusion of local representatives from the Board of Review "has diminished the influence that CAAN and its members have over decisions concerning the operation of the airports." Complaint ¶ 21. The ongoing noise study could not, of course, address that claim.

The matter of standing is a closer question. The federal judicial power is limited to "cases" and "controversies" arising under the Constitution and laws of the United States. Article III, § 1. In its most basic form,

the doctrine of standing asks "whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Aside from certain prudential limitations, a party seeking to litigate in federal court must, at a constitutional minimum, allege "personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen v. Wright*, 468 U.S. 737, 751 (1984). Although defendants argue that plaintiffs have satisfied neither of these requirements, the Court must disagree.

As noted above, CAAN is primarily concerned with the adverse effects of operations at National Airport. As one of its members explains:

4. Most of CAAN's members live under the flight path going to and from National Airport. They are also adversely affected by the traffic congestion resulting from passenger activity at that airport. Some have developed health problems that they attribute to the air traffic, and others' property values have suffered as a result of their proximity to the airport or its flight path.

5. CAAN's members generally favor a nighttime curfew on air traffic and reduction in the level of daytime air traffic at National Airport, accompanied by an expansion of air services available at Dulles [and BWI].

6. The Airports Authority's Master Plan for National Airport will injure CAAN's members further because it proposes to expand the airport's facilities, to build them to accommodate wide-bodied jets, to increase passenger levels, and to increase air carrier traffic by utilizing currently unused slots.

Affidavit of Sherwin Landfield, Pl. Ex. 13, ¶¶ 4-6. Defendants maintain, however, that plaintiffs' injuries are

not caused by the Master Plan. They assert that the Plan is a "noise neutral" map for the renovation of National which does not contemplate the building of any new runways, gates or terminals. According to defendants, decisions about the number and type of aircraft using National, the amount of passengers carried, and the precise landing and takeoff patterns are made by the FAA, the airline companies and the marketplace but *not* by the Master Plan. That may be so, but the Plan contains other features. A taxiway turnoff will be added "[t]o reduce aircraft time on the runway and thus improve capacity." Pl. Ex. 16 at 10. The airports' gates will be remodeled to accommodate new "widebody" airplanes. Affidavit of James A. Wilding, Def. Ex. 8, ¶ 6. And the size of existing terminals and available parking spaces would be almost doubled. Pl. Ex. 16 at 5. Thus, while defendants are correct in stating that the Plan itself will not *cause* an expansion in air traffic at National, it is also true that an increase in both passengers and flights could *not* occur without the significant improvements contemplated by the Plan. Moreover, forecasts prepared for the Master Plan recognize that an increase in flights and passengers will in fact take place, *see* Pl. Exs. 16 at 2; 24 at 12; 25 at II-12. Because defendants nowhere challenge plaintiffs' contention that they are harmed by noise, air pollution and the safety problems associated with flights to and from National, and because the Master Plan will facilitate increased air travel to the airport, their alleged injuries are "fairly traceable" to the Master Plan.

Defendants also assert that granting plaintiffs the relief they seek—an injunction barring implementation of the Plan and precluding the Authority from taking any actions that it would normally submit to the Board of Review for approval—would not redress their injuries because the Authority would be then unable to take any action to remedy the noise situation at National. But if

the Authority may not issue bonds or adopt a budget, continued construction at National would cease, the additional capacity otherwise possible would be halted, and plaintiffs' asserted injuries would be averted. Plaintiffs therefore meet both aspects of the standing inquiry.

Plaintiffs have standing for yet another reason. As the Supreme Court observed in *Buckley v. Valeo*, 424 U.S. 1, 117 (1976), “[p]arty litigants with sufficient concrete interests at stake may have standing to raise constitutional questions of separation of powers with respect to an agency designated to adjudicate their rights.” In addition to their concerns regarding air traffic at National, plaintiffs also contend that the veto power of the Board of Review “diminished the influence” of CAAN over airports issues because no local Congressmen or Senators may be selected for the Board. Complaint ¶ 21. A similar claim was recognized in *National Anti-Hunger Coalition v. Executive Committee of the President's Private Sector Survey on Cost Control*, 711 F.2d 1071 (D.C. Cir. 1983). There, an organization devoted to hunger issues and two low-income individuals brought suit contending that a presidential commission had failed to comply with the Federal Advisory Committee Act’s requirement that its membership be “fairly balanced.” The district court found that plaintiffs had standing, and the court of appeals noted that “[t]he standing question is a close one that we need not resolve to decide this appeal, but we are inclined to agree with the District Court’s conclusion.” 711 F.2d at 1073-74. In a footnote explaining its “inclination to agree,” the court observed that FACA

confers no cognizable personal right to an advisory committee appointment. But, [as] the legislative history makes clear, the “fairly balanced” requirement was designed to ensure that persons or groups directly affected by the work of a particular advisory committee would have some representation on

the committee. When the requirement is ignored, therefore, persons having a direct interest in the committee’s purpose suffer injury-in-fact sufficient to confer standing to sue.

*Id.* at 1074 n.2 (citations omitted). Defendants correctly observe that this case does not arise under FACA and that the Airports Act does not contain a “fairly balanced” requirement. The Act does make plain, however, that the Authority was created in part to protect the interests of local residents such as the members of CAAN.<sup>10</sup> Although the Board of Directors contains local representatives, the Board of Review does not. § 2456 (f)(1). If, therefore, the Board of Review is unconstitutional, the veto power it possesses would dilute the local interests’ representation mandated by the Act. Plaintiffs therefore have standing under the Act to assert this additional injury.

## B. The Merits

1. The Framers of our Constitution “knew that ‘[t]he accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointive or elective, may justly be pronounced the very definition of tyranny.’” *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 859-60 (1986) (Brennan, J., dissenting) (quoting *The Federalist*, No. 46 at 334 (H. Dawson ed. 1876) (J. Madison)). That document accordingly divides the powers of the National Government into three coordinate spheres: Legislative, Executive and

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<sup>10</sup> The Act states that “any change in status of the two airports must take into account the interest of nearby communities . . . and other interested groups,” recognizes the “limited need for a Federal role . . . and the growing local interest,” and notes that the Authority “will improve communications with local officials and concerned residents regarding noise” at National and Dulles. § 2451(6), (7) & (8).

Judicial.<sup>11</sup> This system "was deliberately structured to assure full, vigorous, and open debate on the great issues affecting the people and to provide avenues for the operation of checks on the exercise of governmental power." *Bowsher v. Synar*, 478 U.S. 714, 722 (1986). In the now-famous words of Justice Jackson, the tripartite arrangement seeks to "diffuse[] power the better to secure liberty." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring).

The Supreme Court has developed a number of constitutional guides to preserve and maintain the independence of the Branches, and plaintiffs assert that two are implicated here. The most familiar is the doctrine of separation of powers, which in its fundamental formulation requires that "in the actual administration of the government Congress or the Legislature should exercise the legislative power, the President or the State executive, the Governor, the executive power, and the Courts or the judiciary the judicial power." *J.W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394, 406 (1928). Plaintiffs contend that the Airports Act transgresses this mandate because the Board of Review, which is composed entirely of members of Congress, reviews decisions by the Board of Directors involving the issuance of regulations, the adoption of the Master Plan and the formation of budget plans. In their view, the Act violates the proscription noted by the Supreme Court in *Springer v. Government of the Philippine Islands*, 277 U.S. 189 (1928), that "the legislature cannot engraft executive duties upon a legislative office." *Id.* at 202.

The Supreme Court has also made clear that "the legislative power of the Federal Government [must] be

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<sup>11</sup> Article I, Section 1 provides that "[a]ll legislative Powers shall be vested in a Congress of the United States." Article II, Section 1 states that "[t]he executive Power shall be vested in a President of the United States." And Article III, Section 1 holds that "[t]he judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

exercised in accord with a single, finely wrought and exhaustively considered, procedure." *INS v. Chadha*, 462 U.S. 919, 951 (1983). This procedure is contained in the Bicameralism requirement, which mandates that all bills "shall have passed the House of Representatives and the Senate," Art. I, § 7, cl. 2, and the Presentment Clauses, which provide that thereafter all bills, orders and resolutions "shall be presented to the President of the United States." *Id.* cl. 2 & 3. In *Chadha*, the Supreme Court described these provisions as an "unmistakable expression of a determination that legislation by the national Congress be a step-by-step, deliberate and deliberative process," 462 U.S. at 959, which must be adhered to whenever Congress engages in "an exercise of legislative power." *Id.* at 952.<sup>12</sup> Plaintiffs maintain that the veto power possessed by the Board of Review amounts to "an extra-constitutional check on the execution of the law" in violation of *Chadha*. Motion at 23.

Before assessing the validity of these arguments, the Court pauses to note the gravity of this undertaking. As Justice Stevens has observed, "[w]hen [a court] is called upon to invalidate a statutory provision that has been approved by both Houses of Congress and signed by the President . . . it should only do so for the most compelling constitutional reasons." *Bowsher*, 478 U.S. at 736 (Stevens, J., concurring). There accordingly exists a "presumption that the challenged statute is valid," *Chadha*, 462 U.S. at 944, as well as an understanding that "an Act of Congress ought not to be construed to violate the Constitution if any other possible construction remains available." *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 500 (1979). These devices ensure that "[t]he courts will . . . not lightly assume that Congress intended to infringe constitutionally protected liberties or usurp

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<sup>12</sup> The Court struck down a law which allowed either House of Congress to invalidate a decision by the Attorney General that a deportable alien should be allowed to remain in the United States. 462 U.S. at 952-59.

power constitutionally forbidden it." *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building and Construction Trades Council*, 108 S. Ct. 1392, 1397 (1988). With these standards in mind, and having considered the arguments presented by the parties, the Court finds that the veto power of the Board of Review is constitutional.

Plaintiffs' arguments rest on two fundamental premises. One is their view that the Board of Review is a legislative office under the control and direction of Congress. Plaintiffs state, for example, that in creating the Board of Review Congress "retained the power to veto the [Airports] Authority's major actions." Motion at 23. They describe the Board as "an arm" and as "an agent" of Congress. *Id.* at 26. Plaintiffs' other assumption is that the creation of the Board of Review was compelled by passage of the Airports Act. They assert that "the Board is mandated by federal law," Reply Brief at 2, and contend that the Airports Authority was "directed by statute and lease to establish a congressional Board of Review." *Id.* at 6. Neither of plaintiffs' theories is well-founded, however.

Our examination begins, as it must, with the language of the Airports Act. The statute provides that the Airports Authority is "independent of the Commonwealth of Virginia and its local governments, the District of Columbia, and the Federal Government." § 2456(b)(1). It further states that the Board of Review must consist of Congressmen acting "in their individual capacities, as representatives of users of [National and Dulles]." § 2456(f)(1).<sup>13</sup> These words, which are clear and unequivocal, emphasize the Board's independence: it is not beholden to Congress. Invoking a familiar rule of construction, defendants suggest that the plain meaning of the Act should

<sup>13</sup> The independence of the Board is also reiterated in the Authority's Bylaws as well as the lease it negotiated with the Department of Transportation. See Def. Ex. 3, art. 13.A, and Def. Ex. 4, art. IV, § 1.

govern and further investigation cease. The cases on which they rely involve differing interpretations of *statutory* provisions. In the constitutional context the Supreme Court has cautioned that "separation-of-powers analysis does not turn on the labelling of an activity," *Mistretta v. United States*, 109 S. Ct. 647, 665 (1989), but rather "focuse[s] on the 'unique aspects of the congressional plan at issue and its practical consequences.'" *Id.* (citing *Schor*, 478 U.S. at 857 (1986)). The inquiry therefore continues.

The structure of the Airports Act also discloses the independence of the Board of Review. Although the Board of Review is composed of members of Congress, Congress does not appoint them. Rather, the Board of Directors of the Airports Authority—a group selected by local leaders (except for one Presidential appointee)—establishes the Board of Review. § 2456(f)(1). Moreover, Congress may not remove any of the members of the Board of Review. The statute is silent on this point and, in accord with well-recognized principles of both federal and state law,<sup>14</sup> that silence indicates that the body which appointed the members of the Board of Review (in this case, the Board of Directors) retains the power to remove them.<sup>15</sup> This power of removal is significant for, in concluding that the Comptroller General was "subservient to Congress" in *Bowsher*, the Supreme Court observed that "[t]he critical factor" was the provision allowing for his removal by Congress. 478 U.S. at 727. In addition, it bears repeating that the Board of Review is just that—a review body. Although it can request a vote or study

<sup>14</sup> See *Carlucci v. Doe*, 109 S. Ct. 407, 411 (1988); Va. Code § 24.1-79.6.

<sup>15</sup> The resolutions passed by the Board of Directors appointing the members of the Board of Review reflect this power; they state that "the Board of Directors may remove for cause an appointee to the Board of Review prior to the conclusion of his term." Pl. Exs. 9 & 10.

by the Board of Directors, § 2456(f)(5), the Board of Review only possesses disapproval power and cannot compel the Airports Authority to take any particular action. Finally, members of the Board of Review do not receive any additional compensation beyond their Congressional salaries, are not required to report to Congress about their activities, and are not granted any fixed budget by the Act.

Plaintiffs' arguments to the contrary are unpersuasive. They initially contend that Congressional control is evident because the Board of Review has held all of its meetings on Capitol Hill and because members have responded to inquiries from the public about the Board using official Congressional stationary. But these activities do not show control in the constitutional sense of either the power to appoint or the power to remove but rather simply reflect the fact that all of the members of the Board of Review are also members of Congress. As the Supreme Court has noted in a different context, the Constitution "does not forbid [Congressmen] from wearing two hats; it merely forbids them from wearing both hats at the same time." *Mistretta*, 109 S. Ct. at 671. Plaintiffs next maintain that the Board of Directors' appointment power is illusory (and Congressional control evident) because the Board of Directors must make its appointments to the Board of Review from lists provided by the Speaker of the House and the President *pro tem* of the Senate and because eight of the nine members must come from committees with oversight over airport matters. In both *Bowsher* and *Mistretta*, however, the Supreme Court expressed no qualms about similarly-limited lists that were provided to the President for appointment purposes.<sup>16</sup> In addition, plaintiffs' protestations

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<sup>16</sup> See 478 U.S. at 727 (Comptroller General appointed from list of three provided by Speaker and president *pro tem*); 109 S. Ct. at 674 n.31 (Judicial Conference submits names of six judges for three appointments to Sentencing Commission).

notwithstanding, there is nothing unseemly about the requirement that most of the members of the Board of Review come from committees with jurisdiction over aviation issues, in view of their familiarity (and possible expertise) with the types of problems likely to confront all users of National and Dulles.<sup>17</sup> And it should also be reiterated that the Board of Directors' appointment power is not illusory, for it is free under the Act to reject a candidate submitted for the Board of Review if the nominee is deemed unsuitable for some reason.<sup>18</sup> Plaintiffs' argument with respect to the Authority's appointment power is unpersuasive. Finally, plaintiffs claim that certain statements made during floor debate on the Airports Act establish that the true purpose of the Board of Review was perpetuation of Congressional control, not advancement of user interests. Although numerous statements of Congressional "control" were, in fact, voiced,<sup>19</sup> plaintiffs' contention is rejected. For one thing, the Supreme Court has cautioned that the views of individual legislators should not be accorded significant weight in attempting to divine Congressional intent. *Weinberger v. Rossi*, 456 U.S. 25, 35 n.15 (1982).<sup>20</sup> Moreover, contrary

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<sup>17</sup> The Court is not troubled by the fact that local members of Congress may not serve on the Board of Review. The Act specifically directs that local interests be taken into account in airport decisions, *see supra* note 10, and each of the Board of Directors (with one exception) is appointed by local officials.

<sup>18</sup> Plaintiffs' baldly assert that the members of the Board of Review were "preselected," Reply at 6, but there is no support in the record for this claim.

<sup>19</sup> See 132 Cong. Rec. H11,098 (daily ed. Oct. 15, 1986) (the bill "provides for congressional control over both airports") (statement of Rep. Coughlin); *id.* at H11,100 ("The beauty of the deal is that Congress retains its control without spending a dime"); *id.* at H11,105 (the bill "does not give up congressional control and oversight—that remains in a Congressional Board of Review") (statement of Rep. Conte).

<sup>20</sup> Because the statements cited were made by supporters of the legislation in an eleventh-hour debate (the Airports Act was passed

to plaintiffs' claim that the "entire legislative history" supports their position, Motion at 25, other statements indicating concern for nationwide users of National and Dulles were also made.<sup>21</sup> And, as noted above, the Act specifically states that the Board of Review is an "independent" body, and Congress may neither appoint nor remove its members. In view of these significant countervailing considerations, the statements of "control" simply do not suffice to demonstrate that the Board of Review is an "agent" or an "arm" of the Congress for separation of powers purposes.<sup>22</sup>

Even less persuasive is plaintiffs' position that the Board of Review is somehow "mandated" by the Airports

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as part of an appropriations bill), it is not surprising that expressions of Congressional control might be emphasized to secure passage of the legislation.

<sup>21</sup> Representative Hammerschmidt, later appointed to the Board of Review, stated that it was "created to protect the interests of users of the two airports." 132 Cong. Rec. H11,106 (daily ed. Oct. 15, 1986). A Representative from Maryland who supported the Act observed that the Board "has been established to make sure that the Nation's interest, the congressional interest was attended to in the consideration of how these airports are operated." *Id.* at H11,103 (statement of Rep. Hoyer). And in her testimony at hearings held on the legislation, Secretary Dole emphatically noted that "Members of Congress are heavy users of the air transportation system." *Proposed Transfer of Metropolitan Washington Airports: Hearings on H.R. 2337 Before the Subcomm. on Aviation of the House Comm. on Public Works and Transportation*, 99th Cong., 2d Sess. 110 (1986).

<sup>22</sup> Plaintiffs also cite the three options for the Board of Review considered in August 1986 and argue that Congressional control is evident because two of those options would have created an oversight board appointed directly by Congress. See Pl. Ex. 3. But this contention proves too much. The Department of Justice rendered its opinion that these options were unconstitutional, *id.*, and Congress voted the third method (which the Justice Department had approved) for inclusion in the Act. If anything, that scenario demonstrates that Congress was sensitive to the constitutional ramifications of its actions.

Act. The Act does not establish any entity, federal or otherwise. Rather, it states that the airports are to be transferred "to a properly constituted independent airport authority created by the Commonwealth of Virginia and the District of Columbia," § 2452(a), authorizes the Secretary of Transportation to enter into a lease for National and Dulles, § 2454(a), and establishes certain conditions—including the makeup and powers of the Board of Review—that must be contained within the lease. §§ 2454 & 2456. Having being informed of these terms, Virginia and the District of Columbia freely agreed to enter into the lease with the federal government and passed legislation authorizing the establishment of the Airports Authority.<sup>23</sup> Those jurisdictions could have completely ignored the federal offer of a lease; but the fact that they accepted it does not mean that the Airports Act compelled them to do so. Indeed, had the legislatures of Virginia and the District of Columbia *not* enacted their enabling statutes, the Airports Authority would not have existed and the federal lease of National and Dulles could not have occurred. The Board of Review derives its existence from state law, not federal law.

Stripped of its conceptual underpinnings, plaintiffs' constitutional attack collapses. The separation of powers doctrine is violated only by those provisions of law "that either accrete to a single branch powers more appropriately diffused among separate branches or undermine the authority and independence of one or another coordinate branch." *Mistretta*, 109 S. Ct. at 659-70. See also *Morrison v. Olson*, 108 S. Ct. 2597, 2620 (1988). The Airports Act does neither. It does not improperly accrete any powers to Congress because Congress cannot force the Airports Authority to take any action and because the Board of Review possessing veto power is not under

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<sup>23</sup> Both state laws were passed almost one year *before* passage of the Airports Act, a fact that further undermines plaintiffs' assertion of Congressional influence.

the Congress's control. Nor does the Act undermine the Executive Branch in any way, since the activities of the Board of Review are carried out by an independent, local Airports Authority created under state law.<sup>24</sup> In short, because Congress exercises no federal power under the Act, it cannot overstep its constitutionally-designated bounds.

In addition, the separation of powers doctrine applies horizontally among the federal branches of the federal government, not vertically between the federal and state governments. *See Chadha*, 462 U.S. at 951 (recognizing “[t]he hydraulic pressure inherent within each of the separate Branches to exceed the outer limits of its power”); *Nixon v. Administrator of General Services*, 433 U.S. 425, 433 (1977) (examining “the proper balance between the coordinate branches”); *Buckley*, 424 U.S. at 122 (doctrine is a “self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other”).<sup>25</sup> But Congress took no action vis-a-vis the other branches in passing the Airports Act. Instead, it made an offer of a lease with certain conditions to Virginia and the District of Columbia, which accepted the offer and enacted legislation forming an interstate local entity to administer the Airports. This case is therefore unlike *Springer v. Government of the Philippine Islands*, 277 U.S. 189 (1928), where a territorial legislature removed voting power over stock in several national corporations from a co-equal branch (the Governor-General) and placed it in a Board

<sup>24</sup> Although the airports were formerly administered by the Department of Transportation, it was the Department that created a commission to determine the best way to sever its relationship with the airports, approached the Congress with a proposal for transferring National and Dulles, and obtained lease conditions to protect its interests.

<sup>25</sup> Plaintiffs describe this proposition as an “overly crabbed theory,” Reply at 8, but they suggest no authority to contravene the cases cited above.

that included members of the legislature. Nor is this case like *Bowsher*, in which the Comptroller General, an official removable by Congress, was charged with the interpretation of federal law. 478 U.S. at 732-33. The Airports Act did not place any powers in the Congress at the expense of the Executive Branch, but rather offered them with conditions to Virginia and the District of Columbia. The separation of powers argument must fail.

The Court also concludes that the Airports Act infringes neither the Presentment Clause nor the bicameralism requirement. The Supreme Court in *Chadha* struck down a one-House veto of an immigration decision of the Attorney General because it amounted to “an exercise of legislative power”—defined as “action that had the purpose and effect of altering the legal rights, duties, and relations of persons”—that was had to be taken by both Houses and presented to the President. 462 U.S. at 962. No exercise of legislative power is present in the Airports Act. The statute authorizes a federal agency to lease certain property and states that the lease should contain certain conditions. Without the consent of Virginia and the District of Columbia, the lease would not have been executed and the Authority and the Board of Review would not exist. *Chadha* concerns do not arise in the instant case.

2. The Court also rejects a trio of other constitutional claims asserted by plaintiffs. They first maintain that the Airports Act violates the Appointments Clause, Art. I, § 2, cl. 2, because the members of the Board of Review are “officers of the United States” who must be nominated by the President. The Appointments Clause is only implicated, however, when an individual “exercis[es] significant authority pursuant to the laws of the United States,” *Buckley*, 424 U.S. at 126, and the Board of Review derives its power from an interstate compact whose members are not considered officers of the United

States. *Seattle Master Builders Ass'n v. Pacific Northwest Elec. Power & Conservation Planning Council*, 786 F.2d 1359, 1365 (9th Cir. 1986), cert. denied, 479 U.S. 1059 (1987).<sup>26</sup> The Incompatibility and Ineligibility Clauses also do not apply. The former forbids a member of Congress from simultaneously "holding any Office under the United States," Art. I, § 6, cl. 2; the latter precludes a Congressman from being appointed to "any Office under the United States" if the office was created, or the emoluments increased, during his term as a Congressman. *Id.* But as noted above, the members of the Board of Review do not hold an "office of the United States" but serve on an interstate, local and independent Airports Authority.

## VI. Conclusion

In sum, the Board of Review is not an agent of Congress but owes its existence to an interstate compact between Virginia and the District of Columbia which signed a lease for the transfer of National and Dulles. The states are free to enter into such an interstate compact. The creation of the Authority and the Board of Review was not "mandated" by the Act, and this arm's-length transaction was entered into freely and willingly by all concerned. There is no question that Congress can dispose of federal property by lease and can attach conditions to its transfer, provided there is no constitutional bar to the transfer. See *South Dakota v. Dole*, 107 S. Ct. 2793 (1987).<sup>27</sup>

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<sup>26</sup> The Board of Review is authorized by the Authority's By-Laws and the lease with the federal government, and its powers are to be construed in accordance with Virginia law. Def. Ex. 3, art. 28. The Authority itself was, in turn, created by local legislation. State law, not federal law, governs its powers.

<sup>27</sup> *South Dakota* held that the Secretary of Transportation could constitutionally withhold 5% of highway funds from any state that did not adopt a minimum drinking age of 21 years old. Here, Congress did not threaten to withhold anything if Virginia and the

There is no doubt that the Board of Review is a unique institution. Novelty is not equivalent to unconstitutionality, however. *Mistretta*, 109 S. Ct. at 661 ("Our constitutional principles of separated powers are not violated . . . by mere anomaly or innovation"). In accordance with the Supreme Court's admonition that the separation of powers inquiry should be guided by "pragmatic, flexible approach," *Nixon*, 433 U.S. at 442, all aspects of the Airports Act and its history have been carefully examined. The Court concludes that the Act and the Board of Review that it authorizes do not violate the Constitution.

For these reasons, it is

ORDERED that plaintiffs' motion for summary judgment be and it hereby is denied; and it is

FURTHER ORDERED that defendants' motion for summary judgment be and it hereby is granted.

July 20, 1989

/s/ Joyce Hens Green  
JOYCE HENS GREEN  
United States District Judge

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District did not create an Airports Authority. Nor was the offer of the airports so overwhelmingly irresistible that Virginia and the District of Columbia had no alternative but to accept—they agreed to make substantial payments to the United States Treasury in return for the lease. § 2454(b).

**APPENDIX D**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 88-1022-LFO

FEDERAL FIREFIGHTERS ASSOCIATION, LOCAL 1, *et al.*,  
*Plaintiffs,*  
v.

THE UNITED STATES OF AMERICA, *et al.*,  
*Defendants.*

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MEMORANDUM  
[In Relevant Part]

[Filed Oct. 11, 1989]

A Memorandum filed March 30, 1989, addressed some of the differences between the parties with respect to the application of the Metropolitan Washington Airports Act ("Transfer Act") and a lease implementing that act. *See* 49 U.S.C. §§ 2451-61. That Memorandum and an accompanying Order authorized plaintiffs to amend their complaint to challenge the constitutionality and statutory legality of the composition of a Board of Review which includes several members of Congress and exercises a veto power over actions of the Metropolitan Washington Airports Authority's ("MWAA's") Board of Directors. In addition, plaintiff move for a summary judgment that numerous provisions of a Labor Code adopted by the Authority are not authorized by the Transfer Act: (1) the establishment of an Employee Relations Council to resolve certain employer-employee disputes; (2) judicial review of the Council's decisions in the

courts of Virginia; (3) provisions with respect to certain unfair labor practices; (4) an obligation on the union for so-called fair representation and financial disclosure to members; and (5) a provision precluding union security clauses in any contract. In addition, plaintiffs contend that the "no strike" provision considered in the March 30 Memorandum impinges on First Amendment rights to free speech.

I.

Plaintiffs challenge the constitutionality of the Labor Code because it was submitted to the Authority's Board of Review which includes members of Congress. Involvement of Congressmen, according to plaintiffs, violates separation of powers principles as well as the presentment clause and the requirement that Congress act only by vote of the House and Senate. *See* U.S. Const. art. 1, § 7. Defendants point out, however, that although the Code was presented to the Board of Review, it took no action so that plaintiffs suffered no injury and have no standing to challenge the composition of the Board. Moreover, even if there were a cognizable case or controversy here, the issue of constitutionality has been resolved at the district court level favorably to defendants by Judge Joyce Green's thorough opinion in *Citizens for the Abatement of Aircraft Noise v. MWAA*, Civil Action No. 88-3319 (D.D.C. July 20, 1989).

\* \* \* \*

Date: Oct. 11, 1989

/s/ Louis F. Oberdorfer  
United States District Judge

**APPENDIX E****CONSTITUTIONAL PROVISIONS, STATUTES,  
ORDINANCES AND REGULATIONS INVOLVED****CONSTITUTION OF THE UNITED STATES****Article I, section 1:**

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

**Article I, section 6, clause 2:**

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

**Article I, section 7, clause 2, in pertinent part:**

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law.

**Article I, section 7, clause 3:**

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

**Article II, section 1, in pertinent part:**

The executive Power shall be vested in a President of the United States of America.

**Article II, section 2, clause 2, in pertinent part:**

[H]e shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

**Article IV, section 3, clause 2:**

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

**STATUTES****SUBCHAPTER III—METROPOLITAN WASHINGTON AIRPORTS AUTHORITY****49 U.S.C. § 2451 (1988). Findings**

The Congress finds that—

(1) the two federally owned airports in the metropolitan area of Washington, District of Columbia, constitute an important and growing part of the commerce, transportation, and economic patterns of the Commonwealth of Virginia, the District of Columbia, and the surrounding region;

(2) Baltimore/Washington International Airport, owned and operated by the State of Maryland, is an air transportation facility that provides service to the greater Metropolitan Washington region together with the two federally owned airports, and timely Federal-aid grants to Baltimore/Washington International Airport will provide additional capacity to meet the growing air traffic needs and to compete with other airports on a fair basis;

(3) the Federal Government has a continuing but limited interest in the operation of the two federally owned airports, which serve the travel and cargo needs of the entire Metropolitan Washington region as well as the District of Columbia as the national seat of government;

(4) operation of the Metropolitan Washington Airports by an independent local agency will facilitate timely improvements at both airports to meet the growing demand of interstate air transportation occasioned by the Airline Deregulation Act of 1978 (Public Law 95-504; 92 Stat. 1705);

(5) all other major air carrier airports in the United States are operated by public entities at the State, regional, or local level;

(6) any change in status of the two airports must take into account the interest of nearby communi-

ties, the traveling public, air carriers, general aviation, airport employees, and other interested groups, as well as the interests of the Federal Government and State governments involved;

(7) in recognition of a perceived limited need for a Federal role in the management of these airports and the growing local interest, the Secretary has recommended a transfer of authority from the Federal to the local/State level that is consistent with the management of major airports elsewhere in the Nation;

(8) an operating authority with representation from local jurisdictions, similar to authorities at all major airports in the United States, will improve communications with local officials and concerned residents regarding noise at the Metropolitan Washington Airports;

(9) a commission of congressional, State, and local officials and aviation representatives has recommended to the Secretary that transfer of the federally owned airports be as a unit to an independent authority to be created by the Commonwealth of Virginia and the District of Columbia; and

(10) the Federal interest in these airports can be provided through a lease mechanism which provides for local control and operation.

(Pub.L. 99-500, Title VI, § 6002, Oct. 18, 1986, 100 Stat. 1783-373; Pub.L. 99-591, Title VI, § 6002, Oct. 30, 1986, 100 Stat. 3341-376.)

**§ 2452. Purpose****(a) In general**

It is therefore declared to be the purpose of the Congress in this subchapter to authorize the transfer of operating responsibility under long-term lease of the two

Metropolitan Washington Airport properties as a unit, including access highways and other related facilities, to a properly constituted independent airport authority created by the Commonwealth of Virginia and the District of Columbia, in order to achieve local control, management, operation, and the development of these important transportation assets.

**(b) Inclusion of BWI not precluded**

Nothing in this subchapter shall be construed to prohibit the Airports Authority and the State of Maryland from entering into an agreement whereby Baltimore/Washington International Airport may be made part of a regional airports authority, subject to terms and conditions agreed to by the Airports Authority, the Secretary, the Commonwealth of Virginia, the District of Columbia, and the State of Maryland.

(Pub.L. 99-500, Title VI, § 6003, Oct. 18, 1986, 100 Stat. 1783-374; Pub.L. 99-591, Title VI, § 6003, Oct. 30, 1986, 100 Stat. 3341-377.)

**§ 2453. Definitions**

In this subchapter—

**(1) Administrator**

The term "Administrator" means the Administrator of the Federal Aviation Administration.

**(2) Airports Authority**

The term "Airports Authority" means the Metropolitan Washington Airports Authority, a public body to be created by the Commonwealth of Virginia and the District of Columbia consistent with the requirements of section 2456 of this title.

**(3) Employees**

The term "employees" means all permanent Federal Aviation Administration personnel employed on

the date the lease under section 2454 of this title takes effect by the Metropolitan Washington Airports, an organization within the Federal Aviation Administration.

**(4) Metropolitan Washington Airports**

The term "Metropolitan Washington Airports" means Washington National Airport and Washington Dulles International Airport.

**(5) Secretary**

The term "Secretary" means the Secretary of Transportation.

**(6) Washington Dulles International Airport**

The term "Washington Dulles International Airport" means the airport constructed under the Act entitled "An Act to authorize the construction, protection, operation, and maintenance of a public airport on or in the vicinity of the District of Columbia", approved September 7, 1950 (64 Stat. 770), and includes the Dulles Airport Access Highway and Right-of-way, including the extension between the Interstate Routes I-495 and I-66.

**(7) Washington National Airport**

The term "Washington National Airport" means the airport described in the Act entitled "An Act to provide for the administration of the Washington National Airport, and for other purposes", approved June 29, 1940 (54 Stat. 686).

(Pub.L. 99-500, Title VI, § 6004, Oct. 18, 1986, 100 Stat. 1783-374; Pub.L. 99-591, Title VI, § 6004, Oct. 30, 1986, 100 Stat. 3341-378.)

**§ 2454. Lease of Metropolitan Washington Airports**

**(a) Authority to enter into lease**

The Secretary is authorized to enter into a lease of the Metropolitan Washington Airports with the Airports Authority for a 50-year term and to enter into any related agreement necessary for the transfer of authority and property to the Airports Authority. Authority to enter into a lease and agreement under this section shall lapse two years after October 18, 1986.

**(b) Payments**

**(1) Lease payments**

The lease shall provide for the Airports Authority to pay to the general fund of the Treasury annually an amount, computed using the GNP Price Deflator, to equal \$3,000,000 in 1987 dollars. The Secretary and the Airports Authority may renegotiate the level of lease payments attributable to inflation costs every ten years.

**(2) Retirement obligations**

**(A) Discontinued service**

Not later than one year after the lease takes effect, the Airports Authority shall pay to the Treasury of the United States, to be deposited to the credit of the Civil Service Retirement and Disability Fund, an amount determined by the Office of Personnel Management to represent the actual added costs incurred by the Fund due to discontinued service retirement under section 8336(d)(1) of Title 5 of employees who elect not to transfer to the Airports Authority.

**(B) Unfunded liability**

Not later than one year after the lease takes effect, the Airports Authority shall pay to the

Treasury of the United States, to be deposited to the credit of the Civil Service Retirement and Disability Fund, an amount determined by the Office of Personnel Management to represent the present value of the difference between (i) the future cost of benefits payable from the Fund and due the employees covered under section 2457(e) of this title that are attributable to the period of employment following the date the lease takes effect, and (ii) the contributions made by the employees and the Airports Authority under section 2457(e) of this title. In determining the amount due, the Office of Personnel Management shall take into consideration the actual interest such amount can be expected to earn when invested in the Treasury of the United States.

**(c) Minimum terms and conditions**

The Airports Authority shall agree, at a minimum, to the following conditions and requirements in the lease:

**(1) Operation of airports as a unit**

The Airports Authority shall operate, maintain, protect, promote, and develop the Metropolitan Washington Airports as a unit and as primary airports serving the Metropolitan Washington area.

**(2) Airport purposes**

The real property constituting the Metropolitan Washington Airports shall, during the period of the lease, be used only for airport purposes. For the purposes of this paragraph, the term "airport purposes" means a use of property interests (other than a sale) for aviation business or activities, or for activities necessary or appropriate to serve passengers or cargo in air commerce, or for nonprofit, public use

facilities. If the Secretary determines that any portion of the real property leased to the Airports Authority pursuant to this subchapter is used for other than airport purposes, the Secretary shall (A) direct that appropriate measures be taken by the Airports Authority to bring the use of such portion of real property in conformity with airport purposes, and (B) retake possession of such portion of real property if the Airports Authority fails to bring the use of such portion into a conforming use within a reasonable period of time, as determined by the Secretary.

#### **(3) AIP requirements**

The Airports Authority shall be subject to the requirements of section [49 U.S.C.A. § 2210(a)] and the assurances and conditions required of grant recipients under such Act [49 U.S.C.A. § 2201 et seq.] as of the date the lease takes effect. Notwithstanding section 511(a)(12) of such Act [49 U.S.C.A. § 2210 (a)(12)], all revenues generated by the Metropolitan Washington Airports shall be expended for the capital and operating costs of such airports.

#### **(4) Contracts**

In acquiring by contract supplies or services for an amount estimated to be in excess of \$200,000, or awarding concession contracts, the Airports Authority shall obtain, to the maximum extent practicable, full and open competition through the use of published competitive procedures. By a vote of seven members, the Airports Authority may grant exceptions to the requirements of this paragraph.

#### **(5) Continuation of regulations**

##### **(A) In general**

Except as provided in subparagraph (B) all regulations of the Metropolitan Washington Air-

ports (14 C.F.R. 159) shall become regulations of the Airports Authority on the date the lease takes effect and shall remain in effect until modified or revoked by the Airports Authority in accordance with procedures of the Airports Authority.

##### **(B) Exceptions**

The following regulations shall cease to be in effect on the date the lease takes effect:

- (i) section 159.59(a) of title 14, Code of Federal Regulations (relating to new-technology aircraft); and
- (ii) section 159.191 of title 14, Code of Federal Regulations (relating to violations of Federal Aviation Administration regulations as Federal misdemeanors).

##### **(C) Operations**

The Airports Authority may not increase or decrease the number of instrument flight rule takeoffs and landings authorized by the High Density Rule (14 C.F.R. 93.121 et seq.) at Washington National Airport on October 18, 1986 and may not impose a limitation after the date the lease takes effect on the number of passengers taking off or landing at Washington National Airport.

#### **(6) Transfer of rights, liabilities, and obligations**

##### **(A) In general**

Except as specified in subparagraph (B) of this paragraph, the Airports Authority shall assume all rights, liabilities, and obligations (tangible and incorporeal, present and executory) of the Metropolitan Washington Airports on the date the lease takes effect, including leases, permits, licenses, contracts, agreements,

claims, tariffs, accounts receivable, accounts payable, and litigation relating to such rights and obligations, regardless whether judgment has been entered, damages awarded, or appeal taken. Before the date the lease takes effect, the Secretary shall also assure that the Airports Authority has agreed to cooperate in allowing representatives of the Attorney General and the Secretary adequate access to employees and records when needed for the performance of functions related to the period before the effectiveness of the lease. The Airports Authority shall assume responsibility for the Federal Aviation Administration's Master Plans for the Metropolitan Washington Airports.

**(B) Exceptions**

The procedure for disputes resolution contained in any contract entered into on behalf of the United States before the date the lease takes effect shall continue to govern the performance of the contract unless otherwise agreed to by the parties to the contract. Claims for monetary damages founded in tort, by or against the United States as the owner and operator of the Metropolitan Washington Airports, arising before the date the lease takes effect shall be adjudicated as if the lease had not been entered into.

**(C) Payments into Employees' Compensation Fund**

The Federal Aviation Administration shall remain responsible for reimbursing the Employees' Compensation Fund, pursuant to section 8147 of Title 5 for compensation paid or payable after the date the lease takes effect in accordance with chapter 81 of Title 5 with regard to any injury,

disability, or death due to events arising before such date, whether or not a claim has been filed or is final on such date.

**(D) Collective bargaining rights**

The Airports Authority shall continue all collective bargaining rights enjoyed before the date the lease takes effect by employees of the Metropolitan Washington Airports.

**(7) Audits**

The Comptroller General of the United States may conduct periodic audits of the activities and transactions of the Airports Authority in accordance with generally accepted management principles, and under such rules and regulations as may be prescribed by the Comptroller General. Any such audit shall be conducted at such place or places as the Comptroller General may deem appropriate. All books, accounts, records, reports, files, papers, and property of the Airports Authority shall remain in possession and custody of the Airports Authority.

**(8) Code of ethics**

The Airports Authority shall develop a code of ethics and financial disclosure in order to assure the integrity of all decisions made by its board of directors and employees.

**(9) Restriction on use of certain revenues**

Notwithstanding any other provision of law, no landing fee imposed for operating an aircraft or revenues derived from parking automobiles—

**(A)** at Washington Dulles International Airport may be used for maintenance or operating expenses (excluding debt service, depreciation,

and amortization) at Washington National Airport; or

(B) at Washington National Airport may be used for maintenance or operating expenses (excluding debt service, depreciation, and amortization) at Washington Dulles International Airport.

**(10) General aviation fees**

The Airports Authority shall compute the fees and charges for landing general aviation aircraft at the Metropolitan Washington Airports on the same basis as the landing fees for air carrier aircraft, except that the Airports Authority may require a minimum landing fee not in excess of the landing fee for aircraft weighing 12,500 pounds.

**(11) Other terms**

The Secretary shall include such other terms and conditions applicable to the parties to the lease as are consistent with and carry out the provisions of this subchapter.

**(d) Submission to Congress**

The Secretary shall submit the lease entered into under this section to Congress. The lease may not take effect before the passage of (1) 30 days, or (2) 10 days in which either House of Congress is in session, whichever occurs later.

**(e) Enforcement of lease provisions**

The district courts of the United States shall have jurisdiction to compel the Airports Authority and its officers and employees to comply with the terms of the lease. An action may be brought on behalf of the United States by the Attorney General, or by any aggrieved party.

(Pub.L. 99-500, Title VI, § 6005, Oct. 18, 1986, 100 Stat. 1783-375; Pub.L. 99-591, Title VI, § 6005, Oct. 30, 1986, 100 Stat. 3341-378.)

**§ 2455. Capital improvements, construction, and rehabilitation**

**(a) Improvements**

It is the sense of the Congress that the Airports Authority should—

(1) pursue the improvement, construction, and rehabilitation of the facilities at Washington Dulles International Airport and Washington National Airport simultaneously; and

(2) to the extent practicable, cause the improvement, construction, and rehabilitation proposed by the Secretary to be completed at both of such Airports within 5 years after the earliest date on which the Airports Authority issues bonds under the authority required by section 2456 of this title for any such improvement, construction, or rehabilitation.

**(b) Secretary's assistance**

The Secretary shall assist the three airports serving the Washington, D.C. metropolitan area in planning for operational and capital improvements at those airports and shall accelerate consideration of applications for Federal financial assistance by whichever of the three airports is most in need of increasing airside capacity.

(Pub.L. 99-500, Title VI, § 6006, Oct. 18, 1986, 100 Stat. 1783-378; Pub.L. 99-591, Title VI, § 6006, Oct. 30, 1986, 100 Stat. 3341-381.)

**§ 2456. Airports Authority**

**(a) Powers conferred by Virginia and the District of Columbia**

The Airports Authority shall be a public body corporate and politic, having the powers and jurisdiction as are conferred upon it jointly by the legislative authority of the Commonwealth of Virginia and the District of

Columbia or by either of the jurisdictions and concurred in by the legislative authority of the other jurisdiction, but at a minimum meeting the requirements of this section.

**(b) Purpose**

The Airports Authority shall be—

- (1) independent of the Commonwealth of Virginia and its local governments, the District of Columbia, and the Federal Government; and
- (2) a political subdivision constituted solely to operate and improve both Metropolitan Washington Airports as primary airports serving the Metropolitan Washington area.

**(c) General authorities**

The Airports Authority shall be authorized—

- (1) to acquire, maintain, improve, operate, protect, and promote the Metropolitan Washington Airports for public purposes;
- (2) to issue bonds from time to time in its discretion for public purposes, including the purposes of paying all or any part of the cost of airport improvements, construction, and rehabilitation, and the acquisition of real and personal property, including operating equipment for the airports, which bonds—
  - (A) shall not constitute a debt of either jurisdiction or a political subdivision thereof; and
  - (B) may be secured by the Airports Authority's revenues generally, or exclusively from the income and revenues of certain designated projects whether or not they are financed in whole or in part from the proceeds of such bonds;
- (3) to acquire real and personal property by purchase, lease, transfer, or exchange, and to ex-

ercise such powers of eminent domain within the Commonwealth of Virginia as are conferred upon it by the Commonwealth of Virginia;

- (4) to levy fees or other charges; and
- (5) to make and maintain agreements with employee organizations to the extent that the Federal Aviation Administration is so authorized on October 18, 1986.

**(d) Conflict-of-interest provisions**

The Airports Authority shall be subject to a conflict-of-interest provision providing that members of the board and their immediate families may not be employed by or otherwise hold a substantial financial interest in any enterprise that has or is seeking a contract or agreement with the Airports Authority or is an aeronautical, aviation services, or airport services enterprise that otherwise has interests that can be directly affected by the Airports Authority. Exceptions to requirements of the preceding sentence may be made by the official appointing a member at the time the member is appointed, if the financial interest is fully disclosed and so long as the member does not participate in board decisions that directly affect such interest. The Airports Authority shall include in its code developed under section 2454(c) (8) of this title the standards by which members will determine what constitutes a substantial financial interest and the circumstances under which an exception may be granted.

**(e) Board of directors**

**(1) Appointment**

The Airports Authority shall be governed by a board of directors of 11 members, as follows:

- (A) five members shall be appointed by the Governor of Virginia;

(B) three members shall be appointed by the Mayor of the District of Columbia;

(C) two members shall be appointed by the Governor of Maryland; and

(D) one member shall be appointed by the President with the advice and consent of the Senate.

The Chairman shall be appointed from among the members by majority vote of the members and shall serve until replaced by majority vote of the members.

#### **(2) Restrictions**

Members shall (A) not hold elective or appointive political office, (B) serve without compensation other than for reasonable expenses incident to board functions, and (C) reside within the Washington Standard Metropolitan Statistical Area, except that the member appointed by the President shall not be required to reside in that area.

#### **(3) Terms**

Members shall be appointed to the board for a term of 6 years, except that of members first appointed—

(A) by the Governor of Virginia, 2 shall be appointed for 4 years and 2 shall be appointed for 2 years;

(B) by the Mayor of the District of Columbia, 1 shall be appointed for 4 years and 1 shall be appointed for 2 years; and

(C) by the Governor of Maryland, 1 shall be appointed for 4 years.

#### **(4) Removal of Presidential appointees**

A member of the board appointed by the President shall be subject to removal by the President for cause.

#### **(5) Required number of votes**

Seven votes shall be required to approve bond issues and the annual budget.

#### **(f) Board of Review**

##### **(1) Composition**

The board of directors shall be subject to review of its actions and to requests, in accordance with this subsection, by a Board of Review of the Airports Authority. Such Board of Review shall be established by the board of directors and shall consist of the following, in their individual capacities, as representatives of users of the Metropolitan Washington Airports:

(A) two members of the Public Works and Transportation Committee and two members of the Appropriations Committee of the House of Representatives from a list provided by the Speaker of the House;

(B) two members of the Commerce, Science, and Transportation Committee and two members of the Appropriations Committee of the Senate from a list provided by the President pro tempore of the Senate; and

(C) one member chosen alternately from members of the House of Representatives and members of the Senate, from a list provided by the Speaker of the House or the President pro tempore of the Senate, respectively.

The members of the Board of Review shall elect a chairman. A member of the House of Representa-

tives or the Senate from Maryland or Virginia and the Delegate from the District of Columbia may not serve on the Board of Review.

#### **(2) Terms**

Members of the Board of Review appointed under subparagraphs (A) and (B) of paragraph (1) shall be appointed for terms of six years, except that of the members first appointed, one member under each of subparagraphs (A) and (B) shall be appointed for a term of two years and one member under each of subparagraphs (A) and (B) shall be appointed for a term of four years. Members of the Board of Review appointed under subparagraph (C) shall be appointed for terms of two years. A vacancy in the Board shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy before the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term.

#### **(3) Procedures**

The Board of Review shall establish procedures for conducting its business. The procedures may include requirements for a quorum at meetings and for proxy voting. The Board shall meet at least once each year and shall meet at the call of the chairman or 3 members of the Board. Any decision of the Board of Review under paragraph (4) or (5) shall be by a vote of 5 members of the Board.

#### **(4) Disapproval procedure**

##### **(A) Submission required**

An action of the Airports Authority described in subparagraph (B) shall be submitted to the Board of Review at least 30 days (or at least

60 days in the case of the annual budget) before it is to become effective.

##### **(B) Actions affected**

The following are the actions referred to in subparagraph (A):

- (i) the adoption of an annual budget;
- (ii) the authorization for the issuance of bonds;
- (iii) the adoption, amendment, or repeal of a regulation;
- (iv) the adoption or revision of a master plan, including any proposal for land acquisition; and
- (v) the appointment of the chief executive officer.

##### **(C) 30-day disapproval period**

If the Board of Review does not disapprove an action within 30 days of its submission under this paragraph, the action may take effect. If the Board of Review disapproves any such action, it shall notify the Airports Authority and shall give reasons for the disapproval.

##### **(D) Effect of disapproval**

An action disapproved under this paragraph shall not take effect. Unless an annual budget for a fiscal year has taken effect in accordance with this paragraph, the Airports Authority may not obligate or expend any money in such fiscal year, except for (i) debt service on previously authorized obligations, and (ii) obligations and expenditures for previously authorized capital expenditures and routine operating expenses.

**(5) Request for consideration of other matters**

The Board of Review may request the Airports Authority to consider and vote, or to report, on any matter related to the Metropolitan Washington Airports. Upon receipt of such a request the Airports Authority shall consider and vote, or report, on the matter as promptly as feasible.

**(6) Participation in meetings of Airports Authority**

Members of the Board of Review may participate as nonvoting members in meetings of the board of the Airports Authority.

**(7) Staff**

The Board of Review may hire two staff persons to be paid by the Airports Authority. The Airports Authority shall provide such clerical and support staff as the Board may require.

**(8) Liability**

A member of the Board of Review shall not be liable in connection with any claim, action, suit, or proceeding arising from service on the Board.

**(g) Certain actions to be taken by regulation**

Any action of the Airports Authority changing, or having the effect of changing, the hours of operation of or the type of aircraft serving either of the Metropolitan Washington Airports may be taken only by regulation of the Airports Authority.

**(h) Limitation on authority**

If the Board of Review established under subsection (f) of this section is unable to carry out its functions under this subchapter by reason of a judicial order, the

Airports Authority shall have no authority to perform any of the actions that are required by paragraph<sup>1</sup> (f) (4) of this section to be submitted to the Board of Review.

(Pub.L. 99-500, Title VI, § 6007, Oct. 18, 1986, 100 Stat. 1783-379; Pub.L. 99-591, Title VI, § 6007, Oct. 30, 1986, 100 Stat. 3341-382.)

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<sup>1</sup> So in original. Probably should be "subsection".

**§ 2457. Federal employees at Metropolitan Washington Airports**

**(a) Employee protection**

Not later than the date the lease under section 2454 of this title takes effect, the Secretary shall ensure that the Airports Authority has established arrangements to protect the employment interests of employees during the 5-year period beginning on such date. These arrangements shall include provisions—

(1) which ensure that the Airports Authority will adopt labor agreements in accordance with the provisions of subsection (b) of this section;

(2) for the transfer and retention of all employees who agree to transfer to the Airports Authority in their same positions for the 5-year period commencing on the date the lease under section 2454 of this title takes effect except in cases of reassignment, separation for cause, resignation, or retirement;

(3) for the payment by the Airports Authority of basic and premium pay to transferred employees, except in cases of separation for cause, resignation, or retirement, for 5 years commencing on the date the lease takes effect at or above the rates of pay in effect for such employees on such date;

(4) for credit during the 5-year period commencing on the date the lease takes effect for accrued an-

nual and sick leave and seniority rights which have been accrued during the period of Federal employment by transferred employees retained by the Airports Authority; and

(5) for an offering of not less than one life insurance and three health insurance programs for transferred employees retained by the Airports Authority during the 5-year period beginning on the date the lease takes effect which are reasonably comparable with respect to employee premium cost and coverage to the Federal health and life insurance programs available to employees on the day before such date.

**(b) Labor agreements**

**(1) Adoption**

The Airports Authority shall adopt all labor agreements which are in effect on the date the lease under section 2454 of this title takes effect. Such agreements shall continue in effect for the 5-year period commencing on such date, unless the agreement provides for a shorter duration or the parties agree to the contrary before the expiration of that 5-year period. Such agreements shall be renegotiated during the 5-year period, unless the parties agree otherwise. Any labor-management negotiation impasse declared before the date the lease takes effect shall be settled in accordance with chapter 71 of Title 5.

**(2) Continuation**

The arrangements made pursuant to this section shall assure, during the 50-year lease term, the continuation of all collective bargaining rights enjoyed by transferred employees retained by the Airports Authority.

**(c) Rights of terminated employees**

Any transferred employee whose employment with the Airports Authority is terminated during the 5-year period beginning on the date the lease under section 2454 of this title takes effect shall be entitled, as a condition of any lease entered into in accordance with section 2454 of this title, to rights and benefits to be provided by the Airports Authority that are similar to those such employee would have had under Federal law if termination had occurred immediately before such date.

**(d) Annual and sick leave**

Any employee who transfers to the Airports Authority under this section shall not be entitled to lump-sum payment for unused annual leave under section 5551 of Title 5, but shall be credited by the Airports Authority with the unused annual leave balance on the date the lease under section 6005 takes effect, along with any unused sick leave balance on such date. During the 5-year period beginning on such date, annual and sick leave shall be earned at the same rates permitted on the day before such date, and observed official holidays shall be the same as those specified in section 6103 of Title 5.

**(e) Civil Service retirement**

Any Federal employee who transfers to the Airports Authority and who on the day before the date the lease under section 2454 of this title takes effect is subject to subchapter III, of chapter 83 of Title 5 or chapter 84 of such title shall, so long as continually employed by the Airports Authority without a break in service, continue to be subject to such subchapter or chapter, as the case may be. Employment by the Airports Authority without a break in continuity of service shall be considered to be employment by the United States Government for purposes of such subchapter and chapter. The Air-

ports Authority shall be the employing agency for purposes of such subchapter and chapter and shall contribute to the Civil Service Retirement and Disability Fund such sums as are required by such subchapter and chapter.

**(f) Separated employees**

An employee who does not transfer to the Airports Authority and who does not otherwise remain a Federal employee shall be entitled to all of the rights and benefits available under Federal law for separated employees, except that severance pay shall not be payable to an employee who does not accept an offer of employment from the Airports Authority of work substantially similar to that performed for the Federal Government.

**(g) Access to records**

The Airports Authority shall allow representatives of the Secretary adequate access to employees and employee records of the Airports Authority when needed for the performance of functions related to the period before the date the lease under section 2454 of this title takes effect. The Secretary shall provide the Airports Authority access to employee records of transferring employees for appropriate purposes.

(Pub.L. 99-500, Title VI, § 6008, Oct. 18, 1986, 100 Stat. 1783-382; Pub.L. 99-591, Title VI, § 6008, Oct. 30, 1986, 100 Stat. 3341-385.)

**§ 2458. Relationship to and effect of other laws**

**(a) Other laws**

In order to assure that the Airports Authority has the same proprietary powers and is subject to the same restrictions with respect to Federal law as any other airport except as otherwise provided in this subchapter, dur-

ing the period that the lease authorized by section 2454 of this title is in effect—

(1) the Metropolitan Washington Airports shall be considered public airports for purposes of the Airport and Airway Improvement Act of 1982 (49 App. U.S.C. 2201 et seq.); [49 U.S.C.A. § 2201 et seq.]; and

(2) the Acts entitled "An Act to provide for the administration of the Washington National Airport, and for other purposes", approved June 29, 1940 (54 Stat. 686), "An Act to authorize the construction, protection, operation, and maintenance of a public airport in or in the vicinity of the District of Columbia", approved September 7, 1950 (64 Stat. 770), and "An Act making supplemental appropriations for the support of the Government for the fiscal year ending June 30, 1941, and for other purposes", approved October 9, 1940 (54 Stat. 1030), shall not apply to the operation of the Metropolitan Washington Airports, and the Secretary shall be relieved of all responsibility under those Acts.

**(b) Inapplicability of certain laws**

The Metropolitan Washington Airports and the Airports Authority shall not be subject to the requirements of any law solely by reason of the retention by the United States of the fee simple title to such airports or by reason of the authority of the Board of Review under subsection 2456(f) of this title.

**(c) Police power**

The Commonwealth of Virginia shall have concurrent police power authority over the Metropolitan Washington Airports, and the courts of the Commonwealth of Virginia may exercise jurisdiction over Washington National Airport.

**(d) Planning****(1) In general**

The authority of the National Capital Planning Commission under section 71d of Title 40 shall not apply to the Airports Authority.

**(2) Consultation**

The Airports Authority shall consult—

(A) with the National Capital Planning Commission and the Advisory Council on Historic Preservation before undertaking any major alterations to the exterior of the main terminal at Washington Dulles International Airport, and

(B) with the National Capital Planning Commission before undertaking development that would alter the skyline of Washington National Airport when viewed from the opposing shoreline of the Potomac River or from the George Washington Parkway.

**(e) Operation limitations****(1) High Density Rule**

The Administrator may not increase the number of instrument flight rule takeoffs and landings authorized for air carriers by the High Density Rule (14 C.F.R. 93.121 et seq.) at Washington National Airport on October 18, 1986 and may not decrease the number of such takeoffs and landings except for reasons of safety.

**(2) Annual passenger limitations**

The Federal Aviation Administration air traffic regulation entitled "Modification of Allocation: Wash-

ington National Airport" (14 C.F.R. 93.124) shall cease to be in effect on October 18, 1986.

(Pub.L. 99-500, Title VI, § 6009, Oct. 18, 1986, 100 Stat. 1783-384; Pub.L. 99-591, Title VI, § 6009, Oct. 30, 1986, 100 Stat. 3341-387.)

**§ 2459. Authority to negotiate extension of lease**

The Secretary and the Airports Authority may at any time negotiate an extension of the lease entered into under section 2454(a) of this title.

(Pub.L. 99-500, Title VI, § 6010, Oct. 18, 1986, 100 Stat. 1783-385; Pub.L. 99-591, Title VI, § 6010, Oct. 30, 1986, 100 Stat. 3341-388.)

**§ 2460. Separability**

Except as provided in section 2456(h) of this title, if any provision of this subchapter or the application thereof to any person or circumstance, is held invalid, the remainder of this subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(Pub.L. 99-500, Title VI, § 6011, Oct. 18, 1986, 100 Stat. 1783-385; Pub.L. 99-591, Title VI, § 6011, Oct. 30, 1986, 100 Stat. 3341-388.)

**§ 2461. Nonstop flights****Perimeter rule**

An air carrier may not operate an aircraft nonstop in air transportation between Washington National Airport and another airport that is more than 1,250 statute miles away from Washington National Airport.

(Pub.L. 99-500, Title VI, § 6012, Oct. 18, 1986, 100 Stat. 1783-385; Pub.L. 99-591, Title VI, § 6012, Oct. 30, 1986, 100 Stat. 3341-388.)

**28 U.S.C. § 1254 (1988). Courts of appeals; certiorari; certified questions**

Cases in the courts of appeal<sup>s</sup> may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

(As amended June 27, 1988, Pub.L. 100-352, § 2(a), (b), 102 Stat. 662.)

**1985 SESSION**

**VIRGINIA ACTS OF ASSEMBLY—CHAPTER 598**

*An Act to create a regional airport authority to acquire Washington National Airport and Washington Dulles International Airport from the federal government.*

[S 711]

Approved Apr. 03, 1985

Be it enacted by the General Assembly of Virginia:

1. § 1. Definitions.—For the purposes of this act the following terms and phrases shall have the following meanings:

“Authority Facilities” shall mean any or all airport facilities now existing or hereafter acquired or constructed or caused to be constructed by the Authority under this act, and together with any or all buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in land, water rights, air rights, franchises, machinery equipment, furnishings, landscaping, easements, utilities, approaches, roadways and other facilities necessary or desirable in connection therewith or incidental thereto, including the existing Dulles Airport Access Road and its right-of-way, acquired or constructed by the Authority;

“Authority” shall mean the Metropolitan Washington Airports Authority hereinafter created or, if the Authority shall be abolished, the board, body, or commission or agency succeeding to the principal functions thereof or upon whom the powers given by this act to the Authority shall be conferred by law;

“Cost” shall mean, as applied to Authority Facilities, the cost of acquisition of all lands, structures, rights-of-way, franchises, easements and other property rights and interests, the cost of lease payments, the cost of construction, the cost of demolishing, removing or relocating any

buildings or structures on lands acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of any extensions, enlargements, additions and improvements, the cost of all labor, materials, machinery and equipment, financing charges, interest on all bonds prior to and during construction and, if deemed advisable by the Authority, for a period not exceeding one year after completion of such construction, the cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing the Authority Facilities, administrative expenses, provisions for working capital, reserves for interest and for extensions, enlargements, additions and improvements, the cost of bond insurance and other devices designed to enhance the creditworthiness of the bonds, and such other expenses as may be necessary or incidental to the construction of the Authority Facilities, the financing of such construction and the placing of the Authority Facilities in operation. Any obligation or expenses incurred by the Commonwealth or any agency thereof, with the approval of the Authority, for studies, surveys, borings, preparation of plans and specifications or other work or materials in connection with the construction of the Authority Facilities may be regarded as part of the cost of the Authority Facilities and may be reimbursed to the Commonwealth or such agency out of any funds available therefor or the proceeds of the revenue bonds issued for such Authority Facilities as hereinafter authorized.

"Bonds" or "revenue bonds" shall mean bonds and notes or refunding bonds and notes or bond anticipation notes or other obligations of the Authority issued under the provisions of this act.

**§ 2. Metropolitan Washington Airports Authority created.—**There is hereby created the Metropolitan Wash-

ton Airports Authority, hereafter referred to as the Authority, a public body corporate and politic and independent of all other bodies, having the powers and jurisdiction hereinafter enumerated, and such other and additional powers as shall be conferred upon it by the legislative authorities of both the Commonwealth of Virginia and the District of Columbia.

**§ 3. Metropolitan Washington Airports Authority.—**The Metropolitan Washington Airports Authority created by this act is hereby authorized, when similarly authorized by the District of Columbia, to acquire from the United States of America, by lease or otherwise, the two airports known as Washington National Airport and Washington Dulles International Airport and all related properties now administered by Metropolitan Washington Airports, an agency of the Federal Aviation Administration of the United States Department of Transportation, but only with the approval of the Governor of Virginia. Subject to such gubernatorial approval, general consent is hereby given to conditions imposed by the Congress of the United States on such acquisitions that are not inconsistent with this act.

**§ 4. Membership; terms; officers.—A.** The Authority shall consist of eleven members: five appointed by the Governor of the Commonwealth of Virginia, three appointed by the Mayor of the District of Columbia, two appointed by the Governor of the State of Maryland, and one appointed by the President of the United States. Members representing the Commonwealth of Virginia shall be subject to confirmation by the Virginia General Assembly. For the purposes of doing business, six members shall constitute a quorum. The failure of a single appointing official to appoint one or more members, as herein provided, shall not impair the Authority's creation when the other conditions thereof have been met.

**B.** Members shall (i) not hold elective or appointive public office, (ii) serve without compensation, and (iii)

reside within the Washington Standard Metropolitan Statistical Area, except that the member appointed by the President of the United States shall not be required to reside in that area. The members of the Authority shall be entitled to reimbursement for their expenses incurred in attendance upon the meetings of the Authority or while otherwise engaged in the discharge of their duties.

C. Appointments to the Authority shall be for a period of six years. However, initial appointments shall be made as follows: each jurisdiction shall appoint one member for a full six-year term, a second member for a four-year term and in the case of the Commonwealth and the District of Columbia, a third member for a two-year term. The Governor of Virginia shall make the final two Virginia initial appointments for one two-year and one four-year term. The President shall make initial and subsequent appointments for six-year terms.

D. Seven affirmative votes shall be required to approve bond issues and the annual budget of the Authority.

E. Each member may be removed or suspended from office only for cause, and in accordance with the laws of the jurisdiction from which he is appointed.

F. The Authority shall annually elect one of its members as chairman and another as vice-chairman and shall also elect annually a secretary and a treasurer, or a secretary-treasurer, who may or may not be members of the Authority, and prescribe their powers and duties. The Authority may also appoint from its staff an assistant secretary and an assistant treasurer, or an assistant secretary-treasurer, who shall, in addition to other duties, discharge such functions of the secretary and the treasurer.

G. The members of the Authority shall continue to serve until their successors shall be duly appointed. Any person appointed to fill a vacancy shall serve for the un-

expired term. Any member of the Authority shall be eligible for reappointment for one term.

H. The members of the Authority shall not be personally liable for any act done or action taken in their capacities as members of the Authority, nor shall they be personally liable for any bond, note or other evidence of indebtedness issued by the Authority.

§ 5. Powers and duties of the Authority.—For the purpose of acquiring, operating, maintaining, developing, promoting and protecting Washington National Airport and Washington Dulles International Airport together as primary airports for public purposes serving the metropolitan Washington area, the Authority shall have all necessary or convenient powers including, but not limited to, the power:

1. To adopt and amend by-laws for the regulation of its affairs and the conduct of its business;
2. To plan, establish, operate, develop, construct, enlarge, maintain, equip, operate and protect the airports;
3. To adopt and amend regulations to carry out the powers granted by this section;
4. To adopt an official seal and alter the same at its pleasure;
5. To appoint one or more advisory committees;
6. To issue revenue bonds of the Authority for any of its purposes, payable solely from the fees and revenues pledged for their payment, and to refund its bonds, all as provided in this act;
7. To borrow money on a short-term basis and issue from time to time its notes therefor payable on such terms, conditions or provisions as it may deem advisable;
8. To fix, revise, charge, and collect rates, fees, rentals and other charges for the use of the airports;

9. To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this act;

10. To employ, in its discretion, consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary, and to fix their compensation and benefits. However, the Authority shall comply with any Act of Congress concerning former employees of the Federal Aviation Administration and Metropolitan Washington Airports;

11. To sue and be sued in its own name, plead and be impleaded;

12. To construct or permit the construction of commercial and other facilities upon the airport property on terms established by the Authority and consistent with the purposes of this act;

13. To make and enter into all contracts and agreements necessary or desirable to the performance of its duties, the proper operation of the airports and the furnishing of services to the travelling public and airport users, and such contracts shall be exclusive or limited when it is necessary to further the public safety, improve the quality of service, avoid duplication of services, or conserve airport property and the airport environment;

14. To apply for, receive and accept such payments, appropriations, grants, gifts, loans, advances, and other funds, properties, and services as may be transferred or made available to it by the United States government or any other public or private entity or individual; and

15. To do all acts and things necessary or convenient to carry out the powers expressly granted in this act.

§ 6. Authority rules and regulations.—The Authority shall have the power to adopt, amend, and repeal rules and regulations pertaining to the use, maintenance and

operation of its facilities and governing the conduct of persons and organizations using its facilities.

Unless the Authority shall by unanimous vote of all members present determine that an emergency exists, the Authority shall, prior to the adoption of any rule or regulation or alteration, amendment or modification thereof:

a. Make such rule, regulation, alteration, amendment, or modification in convenient form available for public inspection in the office of the Authority for at least ten days;

b. Publish a notice in a newspaper or newspapers of general circulation in the political subdivision where the Authority's Facilities are located declaring the Authority's intention to consider adopting such rule, regulation, alteration, amendment, or modification and informing the public that the Authority will hold a public hearing at which any person may appear and be heard for or against the adoption of such rule or regulation or such alteration, amendment, or modification, on a day and at a time to be specified in the notice, after the expiration of at least ten days from the day of the publication thereof; and

c. Hold the public hearing on the day and at the time specified in such notice or any adjournment thereof, and hear persons appearing for or against such rule, regulation, alteration, amendment or modification.

The Authority's rules and regulations shall be available for public inspection in the Authority's principal office.

The Authority's rules and regulations relating to:

a. Air operations and motor vehicle traffic, including but not limited to, motor vehicle speed limits and the location of and payment for public parking;

b. Access to and use of Authority Facilities, including but not limited to solicitation, handbilling, picketing and the conduct of commercial activities; and

c. Aircraft operation and maintenance; shall have the force and effect of law, as shall any other rule or regulation of the Authority which shall contain a determination by the Authority that it is necessary to accord the same force and effect of law in the public interest; provided, however, that with respect to motor vehicle traffic rules and regulations, the Authority shall obtain the approval of the traffic engineer or comparable official of the political subdivision in which such rules or regulations are to be enforced. The violation of any rule or regulation of the Authority relating to motor vehicle traffic shall be tried and punished in the same manner as if it had been committed on the public roads of the political subdivision in which such violation occurred; all other violations of the Authority's rules and regulations having the force and effect of law shall be punishable as misdemeanors.

§ 7. Police powers.—The Authority's employees meeting the minimum requirements of the Criminal Justice Officers Training Standards Commission may be given special police power by any of the circuit courts of the political subdivisions in which the Authority's Facilities are located. The authority conferred upon such special policemen shall be exercised only upon the Authority's Facilities and shall be in all terms consistent with the requirements of Chapter 3 of Title 15.1 of the Code of Virginia.

Such special policemen shall have all powers vested in police officers under Chapter 3 of Title 15.1 of the Code of Virginia and shall be responsible upon the Authority's Facilities for enforcing the Authority's rules and regulations and all other applicable statutes, ordinances, rules, and regulations of this Commonwealth and political subdivisions, agencies, and instrumentalities thereof.

Such special policemen may issue summons to appear, or arrest on view or on information without warrant as

permitted by law, and conduct before any court of competent jurisdiction any person violating any rule or regulation.

For the purpose of enforcing such statutes, ordinances, rules and regulations, the court or courts having jurisdiction for the trial of criminal offenses of the political subdivision wherein the offense was committed shall have jurisdiction to try a person charged with the violation of any such statutes, ordinances, rules and regulations.

§ 8. Operation of foreign trade zone.—The Authority is authorized and empowered to establish, operate and maintain a foreign trade zone and otherwise to expedite and encourage foreign commerce.

§ 9. Acquisition of property; eminent domain.—A. The Authority is hereby authorized to acquire by purchase, lease or grant such additional lands, structures, property, rights, rights-of-way, franchises, easements and other interests in lands as it may deem necessary or convenient for construction and operation of the airports, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof.

B. Any political subdivision of the Commonwealth, all or a part of which is located within sixty miles of Authority Facilities is authorized to provide services, to donate real or personal property and to make appropriations to the Authority for the acquisition, construction, maintenance, and operation of the Authority Facilities. Any such political subdivision is hereby authorized to issue its bonds in the manner provided in the Public Finance Act or in any applicable municipal charter for the purpose of providing funds to be appropriated to the Authority. The Authority may agree to assume, or reimburse such a political subdivision for any indebtedness incurred by such political subdivision with respect to facilities conveyed by it to the Authority. With the consent

of the governing body of the political subdivision any such agreement may be made subordinate to the Authority's indebtedness to others.

C. The Authority established hereunder is hereby granted full power to exercise the right of eminent domain in the acquisition of any lands, easements, privileges or other property interests which are necessary for airport and landing field purposes, including the right to acquire, by eminent domain, aviation easements over lands or water outside the boundaries of its airports or landing fields where necessary in the interests of safety for aircraft to provide unobstructed air space for the landing and taking off of aircraft utilizing its airports and landing fields even though such aviation easement be inconsistent with the continued use of such land, or inconsistent with the maintenance, preservation and renewal of any structure or any tree or other vegetation standing or growing on the land at the time of such acquisition. Proceedings for the acquisition of such lands, easements and privileges by condemnation may be instituted and conducted in the name of the Authority in accordance with Title 25 of the Code of Virginia.

**§ 10. Revenue bonds.**—The Authority is hereby authorized to provide resolution for the issuance, at one time or from time to time, of revenue bonds of the Authority for the purpose of paying all or any part of the cost of Authority Facilities, including the refunding of federal appropriations not reimbursed to the United States Treasury by the Metropolitan Washington Airports. The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall mature at such time or times not exceeding forty years from their date or dates, as may be determined by the Authority, and may be subject to redemption or repurchase before maturity, at the option of the Authority, at such price or prices and under such terms and condi-

tions as may be fixed by the Authority prior to the issuance of the bonds. The bonds may bear interest payable at such time or times and at such rate or rates as determined by the Authority or as determined in such manner as the Authority may provide, including the determination by agents designated by the Authority under guidelines established by it. The Authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth of Virginia. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any other provision of this act or any recitals in any bonds issued under the provisions of this section, all such bonds shall be deemed to be negotiable instruments under the laws of the Commonwealth of Virginia. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Authority may sell such bonds in such manner, either at public or negotiated sale, and for such price, as it may determine will best effect the purposes of this section.

The proceeds of the bonds shall be used solely for the payment of the cost of Authority Facilities, including improvements, and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such

bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed such cost, the surplus shall be deposited to the credit of the sinking fund for such bonds.

Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Bonds may be issued under the provisions of this section without obtaining the consent of any agency of the Commonwealth of Virginia, and without any other proceedings, conditions or things not specifically required by this section.

**§ 11. Refunding bonds.**—The Authority is hereby authorized to provide by resolution for the issuance of its revenue refunding bonds for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and if deemed advisable by the Authority, for either or both of the following additional purposes: constructing improvements, extensions or enlargement of the Authority Facilities in connection with which the bonds to be refunded shall have been issued, and paying all or

any part of the cost of any additional Authority Facilities. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect to the same, shall be governed by the provisions of this act insofar as the same may be applicable. Revenue refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this act and, if sold, the proceeds thereof may be applied to the purchases, redemption or payment of such outstanding bonds.

**§ 12. Pledge of funds.**—All moneys received pursuant to the provisions of this act, whether as proceeds from the sale of bonds, as revenues, or as grants, appropriations or other funds provided by federal, state or local governments, may be pledged to the payment of bonds issued by the Authority, if so pledged, shall be deemed to be trust funds to be held and applied solely as provided in this act.

**§ 13. Marketability of bonds.**—The Authority is authorized and empowered to exercise all or any part or combination of the powers herein granted, to make covenants other than and in addition to the covenants herein expressly authorized, of like, or different character; to make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds or, in the absolute discretion of the Authority, as will tend to make the bonds more marketable, notwithstanding that such covenants, acts or things may not be enumerated herein.

**§ 14. Bonds as legal investments and security for public deposits.**—Bonds issued by the Authority under the provisions of this act are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fidu-

ciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations is now or may hereafter be authorized by law.

**§ 15. Credit of Commonwealth and political subdivisions not pledged.**—Revenue bonds issued under the provisions of this act shall not constitute a debt of the Commonwealth of Virginia or of any other political subdivision thereof nor a pledge of the faith and credit of the Commonwealth or of any political subdivision thereof. Such bonds shall be payable solely from funds provided therefor from revenues. The issuance of revenue bonds under the provisions of this act shall not directly, indirectly, or contingently obligate the Commonwealth or any political subdivision thereof to the payment thereof or to the levy or pledge of any form of taxation whatever therefor. All such revenue bonds shall contain a statement on their face substantially to this effect.

**§ 16. Trust agreement.**—In the discretion of the Authority any bonds issued under the provisions of this act may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the power of a trust company within or without the Commonwealth of Virginia. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the fees and other revenues to be received, but shall not convey or mortgage the airports or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the

Authority in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the airports, the rates or fees or other charges to be charged, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth of Virginia which may act as depositary of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such trust agreement may set forth the rights and remedies of the bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the operation of the airports.

**§ 17. Revenues.**—The Authority is hereby authorized to fix, revise, charge and collect fees or other charges for the use of the airports and to contract with any person, partnership, association or corporation desiring the use of any part thereof, including the right-of-way adjoining the airports for placing thereon telephone, telegraph, electric light or power lines, and to fix the terms, conditions, rents and fees or other charges for such use. Such fees or other charges shall be so fixed and adjusted in respect of the aggregate of fees or other charges from the airports as to provide a fund sufficient with other revenues, if any, (i) to pay the cost of maintaining, repairing and operating the airports, (ii) to pay the principal of and interest on such bonds as the same shall become due and payable, and (iii) to create reserves for such purposes. The fees and other charges and all other revenues derived from the airports, except such part thereof as may be necessary to pay such cost of maintenance, repair and

operation and provide such reserves as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The fees and other charges and other revenues or other moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another.

**§ 18. Trust funds.**—All proceeds from the sale of bonds and revenues derived therefrom received pursuant to the provisions of this act shall be deemed to be trust funds to be held and applied solely as provided in this act. The Authority may, in the resolution authorizing the bonds or in the trust agreement securing such bonds, pro-

vide for the payment of the proceeds of the sale of the bonds and the revenues of the Authority to a trustee, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth of Virginia, which shall act as trustee of the funds and hold and apply the same to the purposes of this act, subject to such regulations as this act and such resolution or trust agreement may provide. The trustee may invest and reinvest such funds in such securities as may be provided in the resolution authorizing the bonds or in the trust agreement securing such bonds.

**§ 19. Annual audit.**—The Authority shall keep suitable records of all its financial transactions and shall have the same audited annually. Copies of such audit shall be furnished to the Governor of the Commonwealth of Virginia and to the Mayor of the District of Columbia and shall be open to public inspection.

**§ 20. Remedies.**—Any holder of bonds issued under the provisions of this act or of any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given, may be restricted by such trust agreement, may either at law or in equity, by suit, action, injunction, mandamus or other proceedings, protect and enforce any and all rights under the laws of the Commonwealth of Virginia, or granted by this act or under such trust agreement or the resolution authorizing the issuance of such bonds and may enforce and compel the performance of all duties required by this act or by such agreement or resolution to be performed by the Authority or by any officer or agent thereof including the fixing, charging and collection of fees or other charges.

**§ 21. Exemption from taxation.**—The exercise of the powers granted by this act shall be in all respects for the benefit of the inhabitants of the Commonwealth of Vir-

ginia, for the increase of their commerce, and for the promotion of their safety, health, welfare, convenience and prosperity, and as the operation and maintenance of the airports by the Authority will constitute the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon the airports or any property acquired or used by the Authority under the provisions of this act or upon the income therefrom; and the bonds issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth of Virginia and by any municipality, county or other political subdivision thereof.

**§ 22. Jurisdiction of courts; liability for contracts and torts.—A.** The courts of the Commonwealth of Virginia shall have original jurisdiction of all actions brought by or against the Authority, which courts shall in all cases apply the law of the Commonwealth of Virginia.

**B.** The Authority shall be liable for its contracts and for its torts and those of its members, officers, employees, and agents committed in the conduct of any proprietary function, in accordance with the law of the Commonwealth of Virginia but shall not be liable for any torts occurring in the performance of a governmental function. The exclusive remedy for such breach of contracts and torts for which the Authority shall be liable, as herein provided, shall be by suit against the Authority. Nothing in this act shall be construed as a waiver by the Commonwealth of Virginia or the District of Columbia or of their political subdivisions of any immunity from suit.

**C.** The Authority shall be responsible for all executory contracts entered into by the United States with respect to the former Metropolitan Washington Airports before

the date of acquisition of those airports, except that the procedure for disputes resolution contained in any such contract shall continue to govern the performance of the contract unless otherwise agreed to by the parties to the contract.

**D.** The Authority shall not be responsible for any tort claims arising before the date of transfer.

**§ 23. Procurement Act exemption.—**In light of the multi-jurisdictional nature of the Authority, an exemption is hereby provided to the Authority from the provisions of the Virginia Public Procurement Act.

**§ 24. Act liberally construed.—**This act, being necessary for the welfare of the Commonwealth of Virginia and its inhabitants, shall be liberally construed to effect the purposes thereof.

**§ 25. Constitutional construction.—**The provisions of this act are severable and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions of this act. It is hereby declared to be the legislative intent that this act would have been adopted had such unconstitutional provisions not been included therein.

**§ 26. Inconsistent laws inapplicable.—**All other general or special laws inconsistent with any provision of this act are hereby declared to be inapplicable to the provisions of this act.

**§ 27. Effective date.—**This act shall only become effective upon the enactment into law by the Congress of the United States of legislation that authorizes and directs the sale, lease, or other disposition of the Metropolitan Washington Airports to an Airport Authority created by the legislatures of the Commonwealth of Virginia and the

District of Columbia pursuant to an agreement or compact that is consistent with the provisions of this act: provided, however, the Governor may make appointments for initial Authority membership at such time or times following the passage of this act as he may deem appropriate.

## 1987 SESSION

## VIRGINIA ACTS OF ASSEMBLY—CHAPTER 665

*An Act to amend and reenact §§ 1, 4, 5, 6, 7 and 27 of Chapter 598 of the 1985 Acts of Assembly which created a regional airport authority to acquire Washington National Airport and Washington Dulles International Airport from the federal government, relating to definitions; powers, duties, rules, regulations and police powers of the authority; and the effective date of the chapter; penalty.*

[S 672]

Approved Apr. 8, 1987

Be it enacted by the General Assembly of Virginia:

1. That §§ 1, 4, 5, 6, 7 and 27 of Chapter 598 of the 1985 Acts of Assembly are amended and reenacted as follows:

§ 1. Definitions.—For the purposes of this act the following terms and phrases shall have the following meanings:

“Authority Facilities” shall mean any or all airport facilities now existing or hereafter acquired or constructed or caused to be constructed by the Authority under this act, and together with any or all buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in land, water rights, air rights, franchises, machinery, equipment, furnishings, landscaping, easements, utilities, approaches, roadways and other facilities necessary or desirable in connection therewith or incidental thereto, including the existing Dulles Airport Access Road and its right-of-way, acquired or constructed by the Authority;

“Authority” shall mean the Metropolitan Washington Airports Authority [hereinafter] <sup>[\*]</sup> created by this act

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[\*] Bracketed material struck through on original.

*and by similar enactment by the District of Columbia or, if the Authority shall be abolished, the board, body, or commission or agency succeeding to the principal functions thereof or upon whom the powers given by this act to the Authority shall be conferred by law;*

"Cost" shall mean, as applied to Authority Facilities, the cost of acquisition of all lands, structures, rights-of-way, franchises, easements and other property rights and interests, the cost of lease payments, the cost of construction, the cost of demolishing, removing or relocating any buildings or structures on lands acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of any extensions, enlargements, additions and improvements, the cost of all labor, materials, machinery and equipment, financing charges, interest on all bonds prior to and during construction and, if deemed advisable by the Authority, for a period not exceeding one year after completion of such construction, the cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing the Authority Facilities, administrative expenses, provisions for working capital, reserves for interest and for extensions, enlargements, additions and improvements, the cost of bond insurance and other devices designed to enhance the creditworthiness of the bonds, and such other expenses as may be necessary or incidental to the construction of the Authority Facilities, the financing of such construction and the placing of the Authority Facilities in operation. Any obligation or expenses incurred by the Commonwealth or any agency thereof, with the approval of the Authority, for studies, surveys, borings, preparation of plans and specifications or other work or materials in connection with the construction of the Authority Facilities may be regarded as part of the cost of the Authority Facilities and may be reimbursed to the Commonwealth or such

agency out of any funds available therefor or the proceeds of the revenue bonds issued for such Authority Facilities as hereinafter authorized.

"Bonds" or "revenue bonds" shall mean bonds and notes or refunding bonds and notes or bond anticipation notes or other obligations of the Authority issued under the provisions of this act.

§ 4. Membership; terms; officers.—A. The Authority shall consist of eleven members: five appointed by the Governor of the Commonwealth of Virginia, three appointed by the Mayor of the District of Columbia, two appointed by the Governor of the State of Maryland, and one appointed by the President of the United States. Members representing the Commonwealth of Virginia shall be subject to confirmation by the Virginia General Assembly. For the purposes of doing business, six members shall constitute a quorum. The failure of a single appointing official to appoint one or more members, as herein provided, shall not impair the Authority's creation when the other conditions thereof have been met.

B. Members shall (i) not hold elective or appointive public office, (ii) serve without compensation, and (iii) reside within the Washington Standard Metropolitan Statistical Area, except that the member appointed by the President of the United States shall not be required to reside in that area. The members of the Authority shall be entitled to reimbursement for their expenses incurred in attendance upon the meetings of the Authority or while otherwise engaged in the discharge of their duties.

C. Appointments to the Authority shall be for a period of six years. However, initial appointments shall be made as follows: each jurisdiction shall appoint one member for a full six-year term, a second member for a four-year term and in the case of the Commonwealth and the District of Columbia, a third member for a two-year

term. The Governor of Virginia shall make the final two Virginia initial appointments for one two-year and one four-year term. The President shall make initial and subsequent appointments for six-year terms.

D. Seven affirmative votes shall be required to approve bond issues and the annual budget of the Authority.

E. Each member may be removed or suspended from office only for cause, and in accordance with the laws of the jurisdiction from which he is appointed.

F. The Authority shall annually elect one of its members as chairman and another as vice-chairman and shall also elect annually a secretary and a treasurer, or a secretary-treasurer, who may or may not be members of the Authority, and prescribe their powers and duties. The Authority may also appoint from its staff an assistant secretary and an assistant treasurer, or an assistant secretary-treasurer, who shall, in addition to their duties, discharge such functions of the secretary and the treasurer.

G. The members of the Authority shall continue to serve until their successors shall be duly appointed. Any person appointed to fill a vacancy shall serve for the unexpired term. Any member of the Authority shall be eligible for reappointment for one term.

H. The members of the Authority, *including any non-voting members*, shall not be personally liable for any act done or action taken in their capacities as members of the Authority, *or its board of review*, nor shall they be personally liable for any bond, note or other evidence of indebtedness issued by the Authority.

**§ 5. Powers and duties of the Authority.—A.** For the purpose of acquiring, operating, maintaining, developing, promoting and protecting Washington National Airport and Washington Dulles International Airport together as

primary airports for public purposes serving the metropolitan Washington area, the Authority shall have all necessary or convenient powers including, but not limited to, the power:

1. To adopt and amend bylaws for the regulation of its affairs and the conduct of its business;
2. To plan, establish, operate, develop, construct, enlarge, maintain, equip, [operate] and protect the airports;
3. To adopt and amend regulations to carry out the powers granted by this section;
4. To adopt an official seal and alter the same at its pleasure;
5. To appoint one or more advisory committees *and to establish a board of review*;
6. To issue revenue bonds of the Authority for any of its purposes, payable solely from the fees and revenues pledged for their payment, and to refund its bonds, all as provided in this act;
7. To borrow money on a short-term basis and issue from time to time its notes therefor payable on such terms, conditions or provisions as it may deem advisable;
8. To fix, revise, charge, and collect rates, fees, rentals and other charges for the use of the airports;
9. To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this act;
10. To employ, in its discretion, consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary, and to fix their compensation and benefits. [However, the] *Employees of the Authority shall not participate in any strike or assert any right to*

*strike against the Authority, and any employment agreement entered into by the Authority shall contain an explicit prohibition against strikes by the employee or employees covered by such agreement.* The Authority shall comply with any Act of Congress concerning former employees of the Federal Aviation Administration and Metropolitan Washington Airports;

11. To sue and be sued in its own name, plead and be impleaded;

12. To construct or permit the construction of commercial and other facilities *consistent with the purposes of this act* upon the airport property on terms established by the authority [and consistent with the purposes of this act];

13. To make and enter into all contracts and agreements necessary or desirable to the performance of its duties, the proper operation of the airports and the furnishing of services to the travelling public and airport users, *including contracts for normal governmental services on a reimbursable basis with local political subdivisions where the Authority Facilities are situated and with the District of Columbia government; and any such contracts shall be exclusive or limited when it is necessary to further the public safety, improve the quality of service, avoid duplication of services, or conserve airport property and the airport environment;*

14. To apply for, receive and accept such payments, appropriations, grants, gifts, loans, advances, and other funds, properties, and services as may be transferred or made available to it by the United States government or any other public or private entity or individual; [and]

15. *To make payments to reimburse the local political subdivisions where the Authority Facilities are situated for extraordinary law enforcement costs incurred by such localities; and*

[15.] 16. To do all acts and things necessary or convenient to carry out the powers expressly granted in this act.

B. Pursuant to Section 6007 (b) of the Metropolitan Washington Airports Act of 1986, the Authority is established solely to operate and improve both metropolitan Washington airports as primary airports serving the metropolitan Washington area and shall be independent of the Commonwealth and its local political subdivisions, the District of Columbia and the federal government in the performance and exercise of the airport-related duties and powers enumerated in subdivisions 1 through 16 of subsection A of this section. Any conflict between the exercise of these enumerated powers by the Authority and the powers of any local political subdivision within which Authority Facilities are situated shall be resolved in favor of the Authority.

§ 6. Authority rules and regulations.— A. The Authority shall have the power to adopt, amend, and repeal rules and regulations pertaining to the use, maintenance and operation of its facilities and governing the conduct of persons and organizations using its facilities.

B. Unless the Authority shall by unanimous vote of all members present determine that an emergency exists, the Authority shall, prior to the adoption of any rule or regulation or alteration, amendment or modification thereof:

[a.] 1. Make such rule, regulation, alteration, amendment, or modification in convenient form available for public inspection in the office of the Authority for at least ten days;

[b.] 2. Publish a notice in a newspaper or newspapers of general circulation in the District of Columbia and in the local political [subdivision] subdivisions of the Commonwealth where the [Authority's] Authority Facilities

are located declaring the Authority's intention to consider adopting such rule, regulation, alteration, amendment, or modification and informing the public that the Authority will hold a public hearing at which any person may appear and be heard for or against the adoption of such rule or regulation or such alteration, amendment, or modification, on a day and at a time to be specified in the notice, after the expiration of at least ten days from the day of the publication thereof; and

[c.] 3. Hold the public hearing on the day and at the time specified in such notice or any adjournment thereof, and hear persons appearing for or against such rule, regulation, alteration, amendment or modification.

C. The Authority's rules and regulations shall be available for public inspection in the Authority's principal office.

D. The Authority's rules and regulations relating to:

[a.] (i) Air operations and motor vehicle traffic, including but not limited to, motor vehicle speed limits and the location of and payment for public parking;

[b.] (ii) Access to and use of Authority Facilities, including but not limited to solicitation, handbilling, picketing and the conduct of commercial activities; and

[c.] (iii) Aircraft operation and maintenance; shall have the force and effect of law, as shall any other rule or regulation of the Authority which shall contain a determination by the Authority that it is necessary to accord the same force and effect of law in the public interest; provided, however, that with respect to motor vehicle traffic rules and regulations, the Authority shall obtain the approval of the traffic engineer or comparable official of the *local* political subdivision in which such rules or regulations are to be enforced. [The violation of any rule or regulation of the Authority relating to motor vehicle traffic shall be tried and punished in the

same manner as if it had been committed on the public roads of the political subdivision in which such violation occurred; all other violations of the Authority's rules and regulations having the force and effect of law shall be punishable as misdemeanors.]

E. *The violation of any rule or regulation of the Authority establishing a noise limitation on aircraft that operate at the Authority Facilities shall subject the violator, in the discretion of the circuit court of any political subdivision where the facility is located to a civil penalty not to exceed \$2,500 for each violation. Such penalty shall be paid to the Authority. With the consent of the violator or the accused violator of a rule establishing aircraft noise limits, the Authority may provide, in an order issued against the violator or accused violator, for the payment of civil charges in specific sums not to exceed the limit that could be imposed by the court. Such civil charge when paid shall be in lieu of any civil penalty which could be imposed by the court. Any court proceeding shall be within the exclusive jurisdiction of the circuit court and shall be a civil proceeding at law brought by the Authority.*

F. *The violation of any Authority rule or regulation, having the force and effect of law, shall be a Class 1 misdemeanor unless otherwise specified by this chapter or unless a lesser penalty is set by the Authority in the rule or regulation. The rules of criminal procedure and evidence that apply throughout the Commonwealth shall apply to the adjudication of any case involving the violation of any Authority rule or regulation having the force and effect of law.*

G. *The courts of this Commonwealth shall take judicial notice of the Authority's regularly adopted rules and regulations. For the convenience of the courts which may regularly hear cases arising under the Authority's rules and regulations, the Authority may certify to the clerk*

of such court a copy of its rules and regulations. Any such certification, when signed by the chairman of the Metropolitan Washington Airports Authority, shall be accepted as evidence of the facts therein stated.

*H. With respect to the violation of any statute of the Commonwealth, local ordinance or Authority rules or regulation having the force and effect of law occurring at the Authority Facilities:*

*1. The matter shall be within the jurisdiction of the state courts of the political subdivision where the violation occurred; violations occurring at Washington National Airport shall be within the jurisdiction of the courts for Arlington County;*

*2. The attorney for the Commonwealth shall have authority to prosecute those offenses in the name of the Commonwealth or local government as appropriate; and the county or city attorney, if otherwise authorized to prosecute offenses in the name of the county or city, shall have authority to prosecute those offenses in the name of the county or city; and*

*3. Sheriffs and clerks of the court shall provide those same services and exercise those same powers with respect to Authority Facilities within their jurisdiction as for their political subdivisions.*

**§ 7. Police.**— [The Authority's employees meeting the minimum requirements of the Criminal Justice Officers Training Standards Commission may be given special police power by any of the circuit courts of the political subdivisions in which the Authority's Facilities are located. The authority conferred upon such special policemen shall be exercised only upon the Authority's Facilities and shall be in all terms consistent with the requirements of Chapter 3 of Title 15.1 of the Code of Virginia.] *A. The Commonwealth hereby grants, accepts and agrees to concurrent police power authority over the Metropolitan Washington Airports as provided in Section*

*6009 (c) of the Metropolitan Washington Airports Act of 1986.*

*B. The Authority is authorized to establish and maintain a regular police force and to confer police powers to be exercised with respect to offenses occurring on the Authority Facilities upon its employees meeting the minimum requirements of the Department of Criminal Justice Services.*

Such [special policemen] police officers shall have all powers vested in police officers under Chapter 3 of Title 15.1, Chapter 11 of Title 16.1, Title 18.2 and Title 46.1 of the Code of Virginia and shall be responsible upon the [Authority's] Authority Facilities and within 300 yards of the Facilities for enforcing the laws of the Commonwealth, the Authority's rules and regulations and all other applicable [statutes,] ordinances, rules, and regulations [of this Commonwealth and political subdivisions, agencies, and instrumentalities thereof].

Such [special policemen] police officers may issue summons to appear, or arrest on view or on information without warrant as permitted by law, and conduct before any [court] judicial officer of competent jurisdiction any person violating, upon Authority Facilities, any rule or regulation of the Authority, any ordinance or regulation of any local political subdivision, or any other law of the Commonwealth.

[For the purpose of enforcing such statutes, ordinances, rules and regulations, the court or courts having jurisdiction for the trial of criminal offenses of the political subdivision wherein the offense was committed shall have jurisdiction to try a person charged with the violation of any such statutes, ordinances, rules and regulations.]

*C. The Department of State Police shall exercise the same powers upon Authority Facilities as elsewhere in the Commonwealth.*

*D. The Authority may enter into reciprocal or mutual aid agreements with the local political subdivisions in*

*which the Authority Facilities are situated, any agency of the Commonwealth or of the federal government, or any combination of the foregoing, for cooperation in the furnishing of police services.*

*E. The police force of Arlington County shall have concurrent jurisdiction with the police force established herein at Washington National Airport. The Authority shall enter into an agreement with Arlington County regarding the exercise of police authority.*

*F. The sheriffs and police forces of Loudoun and Fairfax Counties shall continue to exercise concurrent jurisdiction with the police force established herein over the Authority Facilities situated within their respective counties.*

§ 27. Effective date.—This act shall only become effective upon the enactment into law by the Congress of the United States of legislation that authorizes and directs the sale, lease, or other disposition of the Metropolitan Washington Airports to [an Airport] *the Authority* [created by the legislatures of the Commonwealth of Virginia and the District of Columbia pursuant to an agreement or compact that is consistent with the provisions of this act]; provided, however, the Governor may make appointments for initial Authority membership at such time or times following the passage of this act as he may deem appropriate.

2. That an emergency exists and this act is in force from its passage.

COUNCIL OF THE DISTRICT OF COLUMBIA  
NOTICE

D.C. LAW 6-67

"District of Columbia Regional Airports Authority Act of 1985".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 6-200 on first and second readings, September 10, 1985, and September 24, 1985, respectively. Following the signature of the Mayor on October 9, 1985, this legislation was assigned Act No. 6-90, published in the November 1, 1985, edition of the *D.C. Register*, (Vol. 32 page 6093) and transmitted to Congress on October 10, 1985 for a 30-day review, in accordance with Section 602 (c) (1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 6-67, effective December 3, 1985.

/s/ David A. Clarke  
DAVID A. CLARKE  
Chairman of the Council

*Dates Counted During the 30-day Congressional Review Period:*

October 10,11,16,17,18,21,22,23,24,25,28,29,30,31

November 1,4,5,6,7,8,12,13,14,15,18,19,20,21,22

December 2

**AN ACT**  
**D.C. ACT 6-90**

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**IN THE COUNCIL OF  
 THE DISTRICT OF COLUMBIA**

Oct. 09, 1985

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To endorse on behalf of the District government the creation of a regional airport authority to acquire Washington National Airport and Washington Dulles International Airport from the federal government.

**BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,** That this act may be cited as the "District of Columbia Regional Airports Authority Act of 1985".

**Sec. 2. Definitions.** For the purposes of this act, the term:

(1) "Authority facilities" means any or all airport facilities now existing or subsequently acquired or constructed or caused to be constructed by the Authority under this act, together with any or all buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in land, water rights, air rights, franchises, machinery, equipment, furnishings, landscaping, easements, utilities, approaches, roadways and other facilities necessary or desirable in connection with or incidental to the facilities, including the existing Dulles Airport access road and its right-of-way, acquired or constructed by the Authority.

(2) "Authority" means the Metropolitan Washington Airports Authority to be created by the legislatures of

the Commonwealth of Virginia and the District of Columbia with an agreement or compact that is consistent with the provisions of this act, or, if the Authority to be created is later abolished, the board, body, or commission or agency succeeding to the principal functions of the Authority or upon whom the powers given by this act to the Authority shall be conferred by law.

(3) "Cost" means, as applied to Authority facilities, the cost of acquisition of all lands, structures, rights of way, franchises, easements, and other property rights and interests, the cost of lease payments, the cost of construction, the cost of demolishing, removing, or relocating any buildings or structures on lands acquired, including the cost of acquiring any lands to which the buildings or structures may be moved or relocated, the cost of any extensions, enlargements, additions and improvements, the cost of all labor, materials, machinery and equipment, financing charges, interest on all bonds prior to and during construction and, if considered advisable by the Authority, for a period not exceeding 1 year after completion of construction, the cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing the Authority facilities, administrative expenses, provisions for working capital, reserves for interest and for extensions, enlargements, additions and improvements, the cost of bond insurance and other devices designed to enhance the creditworthiness of the bonds, and other expenses necessary or incidental to the construction of the Authority facilities, the financing of this construction, and the placing of the Authority facilities in operation. Any obligation or expenses incurred by the District of Columbia ("District") or any agency of the District, with the approval of the Authority, for studies, surveys, borings, preparation of plans and specifications or other work or materials in connection

with the construction of the Authority facilities may be regarded as part of the cost of the Authority facilities and may be reimbursed to the District or the agency out of any funds available for these purposes or the proceeds of the revenue bonds issued for Authority facilities as authorized by this act.

(4) "Bonds" or "revenue bonds" means bonds and notes or refunding bonds and notes or bond anticipation notes or other obligations of the Authority issued under the provisions of this act.

**Sec. 3. Metropolitan Washington Airports Authority created.**

There is created the Metropolitan Washington Airports Authority, ("Authority"), a public body corporate and politic and independent of all other bodies, having the powers and jurisdiction enumerated by this act, and other and additional powers as shall be conferred upon it jointly by the legislative authorities of the Commonwealth of Virginia and the District or by either of the jurisdictions and concurred in by the legislative authority of the other jurisdiction.

**Sec. 4. Authorization of the Authority.**

The Authority created by this act is authorized, when similarly authorized by the Commonwealth of Virginia, to acquire from the United States of America, by lease or otherwise, the 2 airports known as Washington National Airport and Washington Dulles International Airport and all related properties now administered by Metropolitan Washington Airports, an agency of the Federal Aviation Administration of the United States Department of Transportation, but only with the approval of the Mayor of the District of Columbia. Subject to this mayoral approval, general consent is given to conditions imposed by the Congress of the United States on acquisitions that are not inconsistent with this act. The Mayor

shall procure the concurrence of the Council of the District of Columbia, by resolution, prior to Mayoral approval of the terms of the compact, lease or other agreements which effectuate the acquisition.

**Sec. 5. Membership; terms; officers.**

The Authority shall consist of 11 members: Five appointed by the Governor of the Commonwealth of Virginia, 3 appointed by the Mayor of the District, 2 appointed by the Governor of the State of Maryland, and 1 appointed by the President of the United States. Members representing the District shall be subject to confirmation by the Council of the District of Columbia. For the purposes of doing business, 6 members shall constitute a quorum. The failure of a single appointing official to appoint 1 or more members, as provided in this act, shall not impair the Authority's creation when the other conditions of this creation have been met.

(b) Members shall: (1) Not hold elective or appointive public office; (2) serve without compensation; and (3) reside within the Washington Standard Metropolitan Statistical Area, except that the member appointed by the President of the United States shall not be required to reside in that area. The members of the Authority shall be entitled to reimbursement for their expenses incurred in attending the meetings of the Authority or while otherwise engaged in the discharge of their duties.

(c) Appointments to the Authority shall be for a period of 6 years. However, initial appointment shall be made as follows: Each jurisdiction shall appoint 1 member for a full 6-year term, a second member for a 4-year term and in the case of the Commonwealth of Virginia and the District, a third member for a 2-year term. The Governor of Virginia shall make the final 2 Virginia initial appointments for one 2-year and one 4-year term. The President shall make initial and subsequent appointments for 6-year terms.

(d) Seven affirmative votes shall be required to approve bond issues and the annual budget of the Authority.

(e) Each member may be removed or suspended from office only for cause, and in accordance with the laws of the jurisdiction from which the member is appointed.

(f) The Authority shall elect annually 1 of its members as chairman and another as vice-chairman and shall also elect annually a secretary and a treasurer, or a secretary-treasurer, who may or may not be members of the Authority, and prescribe their powers and duties. The Authority may also appoint from its staff an assistant secretary and an assistant treasurer, or an assistant secretary-treasurer, who shall, in addition to other duties, discharge the functions of the secretary and the treasurer.

(g) The members of the Authority shall continue to serve until their successors are duly appointed. Any person appointed to fill a vacancy shall serve for the unexpired term. Any member of the Authority shall be eligible for reappointment for 1 term.

(h) The members of the Authority shall not be personally liable for any act done or action taken in their capacities as members of the Authority, nor shall they be personally liable for any bond, note, or other evidence of indebtedness issued by the Authority.

#### Sec. 6. Powers and duties of the Authority.

For the purpose of acquiring, operating, maintaining, improving, promoting and protecting Washington National Airport and Washington Dulles International Airport together as primary airports for public purposes serving the metropolitan Washington area, the Authority shall have all necessary or convenient powers including, but not limited to, the power:

(1) To adopt and amend by-laws for the regulation of its affairs and the conduct of its business;

(2) To plan, establish, operate, develop, construct, enlarge, maintain, equip, operate and protect the airports;

(3) To adopt and amend regulations to carry out the powers granted by this section;

(4) To adopt an official seal and alter this seal at its pleasure;

(5) To appoint one or more advisory committees;

(6) To issue revenue bonds of the Authority for any of its purposes, payable solely from the fees and revenues pledged for their payment, and to refund its bonds, all as provided in this act;

(7) To borrow money on a short-term basis and issue from time to time its notes therefor payable on terms, conditions, or provisions as it may deem advisable;

(8) To fix, revise, charge, and collect rates, fees, rentals and other charges for the use of the airports;

(9) To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this act;

(10) To employ, in its discretion, consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and other employees and agents as may be necessary, and to fix their compensation and benefits. However, the Authority shall comply with any act of Congress concerning former employees of the Federal Aviation Administration and Metropolitan Washington Airports;

(11) To sue and be sued in its own name, plead and be impleaded;

(12) To construct or permit the construction of commercial and other facilities upon the airport property on terms established by the Authority and consistent with the purposes of this act;

(13) To make and enter into all contracts and agreements necessary or desirable to the performance of its duties, the proper operation of the airports and the furnishing of services to the traveling public and airport users, and these contracts shall be exclusive or limited when it is necessary to further the public safety, improve the quality of service, avoid duplication of services; or conserve airport property and the airport environment;

(14) To apply for, receive, and accept payments, appropriations, grants, gifts, loans, advances, and other funds, properties, and services as may be transferred or made available to it by the United States government or any other public or private entity or individual; and

(15) To do all acts necessary or convenient to carry out the powers expressly granted in this act.

**Sec. 7. Authority rules and regulations.**

(a) The Authority shall have the power to adopt, amend, and repeal rules and regulations pertaining to the use, maintenance and operation of its facilities and governing the conduct of persons and organizations using its facilities:

(b) Unless the Authority shall by unanimous vote of all members present determine that an emergency exists, the Authority shall, before the adoption of any rule or regulation or alteration, amendment or modification;

(1) Make the rule, regulation, alteration, amendment, or modification in convenient form available for public inspection in the office of the Authority for at least 10 days;

(2) Publish a notice in a newspaper or newspapers of general circulation in the political subdivision where the Authority's facilities are located and the District declaring the Authority's intention to consider adopting the rule, regulation, alteration, amendment, or modification and informing the public that the Authority will hold a

public hearing at which any person may appear and be heard for or against the adoption of the rule or regulation or the alteration, amendment, or modification, on a day and at a time to be specified in the notice, after the expiration of at least 10 days from the day of the publication; and

(3) Hold the public hearing on the day and at the time specified in the notice or any adjournment of the hearing, and hear persons appearing for or against the rule, regulation, alteration, amendment, or modification.

(c) The Authority's rules and regulations shall be available for public inspection in the Authority's principal office.

(d) The Authority's rules and regulations relating to:

(1) Air operations and motor vehicle traffic, including but not limited to, motor vehicle speed limits and the location of and payment for public parking;

(2) Access to and use of Authority facilities, including but not limited to solicitation, handbilling, picketing and the conduct of commercial activities; and

(3) Aircraft operation and maintenance, shall have the force and effect of law, as shall any other rule or regulation of the Authority that shall contain a determination by the Authority that it is necessary to accord the same effect of law in the public interest; except, that, with respect to motor vehicle traffic rules and regulations, the Authority shall obtain the approval of the traffic engineer or comparable official of the political subdivision in which the rules or regulations are to be enforced. The violation of any rule or regulation of the Authority relating to motor vehicle traffic shall be tried and punished in the same manner as if it had been committed on the public roads of the political subdivisions in which the violation occurred. All other violations of the Authority's rules and regulations having the effect of law shall be punishable as misdemeanors.

**Sec. 8. Police powers.**

(a) The Authority's employees meeting the minimum requirements of the Commonwealth of Virginia's Criminal Justice Officer's Training Standards Commission may be given special police power by any of the circuit courts of the political subdivisions in which the Authority's facilities are located. The authority conferred upon these special police officers shall be exercised only upon the Authority's facilities and shall be in all terms consistent with the requirements of chapter 3 of title 15.1 of the Code of Virginia.

(b) These special police officers shall have all powers vested in police officers under chapter 3 of title 15.1 of the Code of Virginia and shall be responsible upon the Authority's facilities for enforcing the Authority's rules and regulations and all other applicable statutes, ordinances, rules, and regulations of the Commonwealth of Virginia and political subdivision, agencies, and instrumentalities of the Commonwealth of Virginia.

(c) These special police officers shall issue summonses to appear, or arrest on view or on information without warrant as permitted by law, and conduct before any court of competent jurisdiction any person violating any rule or regulation.

(d) For the purpose of enforcing these statutes, ordinances, rules, and regulations, the court or courts having jurisdiction for the trial of criminal offenses of the political subdivisions where the offense was committed shall have jurisdiction to try a person charged with the violation of the statutes, ordinances, rules, and regulations.

**Sec. 9. Operation of foreign trade zone.**

The Authority may establish, operate, and maintain a foreign trade zone and otherwise expedite and encourage foreign commerce.

**Sec. 10. Acquisition of property; eminent domain.**

(a) The Authority may acquire by purchase, lease, or grant additional lands, structures, property, rights, rights-of-way, franchises, easements and other interests in lands as it may consider necessary or convenient for construction and operation of the airports, upon terms and at prices as may be considered by it to be reasonable and can be agreed upon between it and the owner.

(b) The District may provide services, donate real or personal property, and make appropriations to the Authority for the acquisition, construction, maintenance, and operation of the Authority facilities. The Authority may agree to assume or reimburse the District for any indebtedness incurred by the District with respect to facilities conveyed by the District to the Authority. With the consent of the Council of the District of Columbia, the agreement may be made subordinate to the Authority's indebtedness to others.

(c) The Authority is granted full power to exercise the right of eminent domain within the Commonwealth of Virginia in the acquisition of any lands, easements, privileges or other property interests that are necessary for airport and landing field purposes, including the right to acquire, by eminent domain, aviation easements over lands or water outside the boundaries of its airports or landing fields where necessary in the interests of safety for aircrafts to provide unobstructed air space for the landing and taking off of aircraft utilizing its airports and landing fields even though the aviation easement may be inconsistent with the continued use of the land, or inconsistent with the maintenance, preservation and renewal of any structure or any tree or other vegetation standing or growing on the land at the time of the acquisition. Proceedings for the acquisition of lands, easements and privileges by condemnation may be instituted and conducted

in the name of the Authority in accordance with title 25 of the Code of Virginia.

**Sec. 11. Revenue bonds.**

(a) The Authority may provide by resolution for the issuance, at 1 time or from time to time, of revenue bonds of the Authority for the purpose of paying all or any part of the cost of Authority facilities, including the refunding of federal appropriations not reimbursed to the United States Treasury by the Metropolitan Washington Airports. The principal of and the interest on these bonds shall be payable solely from the funds provided for this payment. The bonds of each issue shall be dated, shall mature at times not exceeding 40 years from their dates, as may be determined by the Authority, and may be subject to redemption or repurchase before maturity, at the option of the Authority, at prices and under these terms and conditions as may be fixed by the Authority before the issuance of the bonds. The bonds may bear interest payable at times and at rates as determined by the Authority or as determined in the manner as the Authority may provide, including the determination by agents designated by the Authority under guidelines established by it. The Authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached to the bonds, and shall fix the denominations of the bonds and the places of payment of principal and interest, which may be at any bank or trust company within or without the District of Columbia. In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons shall cease to be that officer before the delivery of the bonds, the signature or facsimile shall be valid and sufficient for all purposes the same as if the officer had remained in office until delivery. Notwithstanding any other provision of this act or any recitals in any bonds issued under the provisions of this section, all bonds shall be considered to be negotiable instruments under the laws of the District.

The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Authority may sell bonds in the manner, either at public or negotiated sale, and for the price, as it may determine will best effect the purposes of this section.

(b) The proceeds of the bonds shall be used solely for the payment of the cost of Authority facilities, including improvements, and shall be disbursed in the manner and under the restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than the cost, additional bonds may in like manner be issued to provide the amount of the deficit, and, unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds, shall be considered to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed the cost, the surplus shall be deposited to the credit of the sinking fund for the bonds.

(c) Before the preparation of definitive bonds, the Authority may, under the same restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds that become mutilated or have been destroyed or lost. Bonds may be issued under the provisions of this section without obtaining the consent of any agency of the District

and without any other proceedings, conditions or things not specifically required by this section.

**Sec. 12. Refunding bonds.**

The Authority may provide by resolution for the issuance of its revenue refunding bonds for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this act, including the payment of any redemption premium on the bonds and any interest accrued or to accrue to the date of redemption of the bonds, and if considered advisable by the Authority, for either or both of the following additional purposes: constructing improvements, extensions or enlargement of the Authority facilities in connection with which the bonds to be refunded shall have been issued; and, paying all or any part of the cost of any additional Authority facilities. The issuance of bonds, the maturities, and other details of the issuance, the rights of the holders of the bonds, and the rights, duties and obligations of the Authority in respect to the bonds, shall be governed by the provisions of this act insofar as this act may be applicable. Revenue refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this act and, if sold, the proceeds of the bonds may be applied to the purchase, redemption, or payment of outstanding bonds.

**Sec. 13. Pledge of funds.**

All monies received pursuant to the provisions of this act, whether as proceeds from the sale of bonds, as revenues, or as grants, appropriations, or other funds provided by federal, state, or local governments, may be pledged to the payment of bonds issued by the Authority and, if so pledged, shall be considered to be trust funds to be held and applied solely as provided in this act.

**Sec. 14. Marketability of bonds.**

The Authority may exercise all or any part of combination of the powers granted by this act, including the

power: To make covenants other than and in addition to the covenants expressly authorized, of like, or different character; to make covenants and to do all acts as may be necessary, convenient, or desirable in order to secure its bonds or, in the absolute discretion of the Authority, as will tend to make the bonds more marketable, notwithstanding that the covenants or acts may not be enumerated in this act.

**Sec. 15. Bonds as legal investments and security for public deposits.**

Bonds issued by the Authority under the provisions of this act are securities in which all public officers and public bodies of the District, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. These bonds are securities that may properly and legally be deposited with and received by any municipal officer or any agency of the District for any purpose for which the deposit of bonds or obligations is now or may subsequently be authorized by law.

**Sec. 16. Credit of the District not pledged.**

Revenue bonds issued under the provisions of this act shall not constitute a debt of the District nor a pledge of the faith and credit of the District. The bonds shall be payable solely from funds provided for the bonds from revenues. The issuance of revenue bonds under the provisions of this act shall not directly, indirectly, or contingently obligate the District to any form of taxation whatever. All revenue bonds shall contain a statement on their face substantially to this effect.

**Sec. 17. Trust agreement.**

In the discretion of the Authority any bonds issued under the provisions of this act may be secured by a

trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the power of a trust company within or without the District. The trust agreement or the resolution providing for the issuance of the bonds may pledge or assign the fees and other revenues to be received, but shall not convey or mortgage the airports or any part of the airports. The trust agreement or resolution providing for the issuance of the bonds may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the airports, the rates or fees or other charges to be charged, and the custody, safeguarding the application of all monies. It shall be lawful for any bank or trust company incorporated under the laws of the District that may act as depositary of the proceeds of bonds or of revenues to furnish indemnifying bonds or to pledge securities as may be required by the Authority. Any trust agreement may set forth the rights and remedies of the bondholders. In addition, any trust agreement or resolution may contain other provisions the Authority considers reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of the trust agreement or resolution may be treated as a part of the cost of the operation of the airports.

#### Sec. 18. Revenues.

The Authority may fix, revise, charge, and collect fees or other charges for the use of the airports, contract with any person, partnership, association, or corporation desiring the use of any part of the airports, including the right-of-way adjoining the airports for placing on the airports telephone, telegraph, electric light or power

lines, and fix the terms, conditions, rents and fees or other charges for use. Fees or other charges shall be so fixed and adjusted in respect of the aggregate of fees or other charges from the airports as to provide a fund sufficient with other revenues, if any, (1) to pay the cost of maintaining, repairing and operating the airports, (2) to pay the principal of and interest on bonds as they become due and payable, and (3) to create reserves for these purposes. The fees and other charges and all other revenues derived from the airports, except the part as may be necessary to pay the cost of maintenance, repair, and operation and provide reserves as may be provided for in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds, shall be set aside at regular intervals as may be provided in the resolution or the trust agreement in a sinking fund, which is pledged to, and charged with, the payment of the principal of and the interest on the bonds as they become due, and the redemption price or the purchase price of bonds retired by call or purchase as provided in the bonds. The pledge shall be valid and binding from the time when the pledge is made. The fees, other charges, and other revenues or other monies so pledged and subsequently received by the Authority shall immediately be subject to the lien of the pledge without any physical delivery of the lien or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether the parties have notice of the lien. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of monies to the credit of the sinking fund shall be subject to the provisions of the resolution authorizing the issuance of the bonds or of the trust agreement. Except as may otherwise be provided in the resolution or the trust agreement, the sinking fund shall be a fund for

all these bonds without distinction or priority of 1 over another.

**Sec. 19. Trust funds.**

All proceeds from the sale of bonds and revenues derived from the bonds received pursuant to the provisions of this act shall be considered to be trust funds to be held and applied solely as provided in this Act. The Authority may, in the resolution authorizing the bonds or in the trust agreement securing the bonds, provide for the payment of the proceeds of the sale of the bonds and the revenues of the Authority to a trustee, which may be any trust company or bank having the powers of a trust company within or without the District, which shall act as trustee of the funds, and hold and apply the funds to the purposes of this act, subject to any regulations this act and the resolution or trust agreement may provide. The trustee may invest and reinvest the funds in securities as may be provided in the resolution authorizing the bonds or in the trust agreement securing the bonds.

**Sec. 20. Annual audit.**

The Authority shall prepare financial statements at the end of each of its fiscal years in conformity with generally accepted accounting principles. These financial statements shall be examined annually by an independent certified public accountant in accordance with generally accepted auditing standards. Copies of each audit report shall be furnished to the Governor of the Commonwealth of Virginia and to the Mayor of the District not later than 120 days after the end of each fiscal year of the Authority and shall be open to public inspection.

**Sec. 21. Remedies.**

Any holder of bonds issued under the provisions of this act or of any of the coupons appertaining to the bonds, and the trustee under any trust agreement, except to the extent the rights given by this act, may be restricted by

the trust agreement, may either at law or in equity, by suit, action, injunction, mandamus or other proceedings, protect and enforce any and all rights under the laws of the District, or granted by this act or under the trust agreement or the resolution authorizing the issuance of the bonds and may enforce and compel the performance of all duties required by this act or by the agreement or resolution to be performed by the Authority or by any officer or agent of the Authority including the fixing, charging, and collection of fees or other charges.

**Sec. 22. Exemption from taxation.**

The exercise of the powers granted by this act shall be in all respects for the benefit of the inhabitants of the District for the increase of their commerce, and for the promotion of their safety, health, welfare, convenience, and prosperity, and as the operation and maintenance of the airports by the Authority will constitute the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon the airports or any property acquired or used by the Authority under the provisions of this act or upon the income therefrom; and the bonds issued under the provisions of this act, their transfer and the income from the bonds, including any profit made on the sale of the bonds, shall at all times be free and exempt from taxation by the District.

**Sec. 23. Jurisdiction of courts; liability for contracts and torts.**

(a) The courts of the Commonwealth of Virginia shall have original jurisdiction over all actions brought by or against the Authority, which courts shall in all cases apply the law of the Commonwealth of Virginia.

(b) The Authority shall be liable for its contracts and for its torts and those of its members, officers, employees, and agents committed in the conduct of any proprietary function, in accordance with the law of the Com-

monwealth of Virginia but shall not be liable for any torts occurring in the performance of a governmental function. The exclusive remedy for breach of contracts and torts for which the Authority shall be liable, as provided by this act, shall be by suit against the Authority. Nothing in this act shall be construed as a waiver by the District or the Commonwealth of Virginia or its political subdivisions of any immunity from suit.

(c) The Authority shall be responsible for all executory contracts entered into by the United States with respect to the former Metropolitan Washington Airports before the date of acquisition of those airports, except that the procedure for disputes resolution contained in any contract shall continue to govern the performance of the contract unless otherwise agreed to by the parties to the contract.

(d) The Authority shall not be responsible for any tort claims arising before the date of transfer.

**Sec. 24. Procurement exemption.**

In light of the multi-jurisdictional nature of the Authority, an exemption is provided to the Authority from all laws and regulations of the District governing public procurement.

**Sec. 25. Act liberally construed.**

This Act, being necessary for the welfare of the District and its inhabitants, shall be liberally construed to effect its purposes.

**Sec. 26. Constitutional construction.**

The provisions of this act are severable and if any of its provisions are held unconstitutional by any court of competent jurisdiction, the decision of that court shall not affect or impair any of the remaining provisions of this act. It is declared to be the legislative intent that this act would have been adopted had any unconstitutional provisions not been included.

**Sec. 27. Inconsistent laws inapplicable.**

All other general or special laws inconsistent with any provision of this act are declared to be inapplicable to the provisions of this act.

**Sec. 28. Effective date.**

This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of vote by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-233(c)(1)), and upon the enactment into law by the Congress of the United States of legislation that authorizes and directs the sale, lease, or other disposition of the Metropolitan Washington Airports to an Airports Authority created by the legislatures of the Commonwealth of Virginia and the District pursuant to an agreement or compact that is consistent with the provisions of this act, whichever occurs later.

/s/ David A. Clarke  
Chairman  
Council of the District of Columbia

/s/ Marion Barry  
Mayor  
District of Columbia

APPROVED: October 9, 1985

## COUNCIL OF THE DISTRICT OF COLUMBIA

## NOTICE

D.C. Law 7-18

"District of Columbia Regional Airports Authority Act of 1985 Amendment Act of 1987".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 7-172 on first and second readings, April 14, 1987, and May 5, 1985, respectively. Following the signature of the Mayor on June 1, 1987, this legislation was assigned Act 7-32, published in the June 12, 1987, edition of the *D.C. Register*, (Vol. 34 page 3804) and transmitted to Congress on June 10, 1987, for a 30-days review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 7-18, effective July 25, 1987.

/s/ David A. Clarke  
 DAVID A. CLARKE  
 Chairman of the Council

*Dates Counted During the 30-day Congressional Review Period:*

June 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30  
 July 1, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24

## AN ACT

D.C. ACT 7-32

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Jun. 01, 1987

To amend the District of Columbia Regional Airports Authority Act of 1985 to conform with legislation passed by the legislature of the Commonwealth of Virginia and by the United States Congress, to authorize the Metropolitan Washington Airports Authority to establish a board of review, and to establish civil penalties for violations of rules of the Metropolitan Washington Airports Authority.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "District of Columbia Regional Airports Authority Act of 1985 Amendment Act of 1987".

## Sec. 2. Findings.

The Council of the District of Columbia ("Council") finds that:

(1) Congress adopted the Metropolitan Washington Airports Act of 1986, approved October 30, 1986 (100 Stat. 3341; 49 U.S.C. app. 2456) ("Airports Act"), which authorized the transfer of operating responsibility of Washington Dulles International Airport and Washington National Airport to a local authority under a 50-year lease.

(2) Section 6007 of the Airports Act requires that the powers and jurisdiction of the Metropolitan Washington Airports Authority be conferred jointly by the legislative

authority of the Commonwealth of Virginia and the District of Columbia or by either of the jurisdictions and concurred in by the legislative authority of the other jurisdiction.

(3) The Council adopted legislation in 1985 which conformed to the original Virginia Statute authorizing a local authority, and it is therefore appropriate to adopt amendments in conformity with amendments recently approved by the legislature of the Commonwealth of Virginia in S. 672, 169 Leg., 1987 Sess. (1987) in response to the Airports Act.

Sec. 3. The District of Columbia Regional Airports Authority Act of 1985, effective December 3, 1985 (D.C. Law 6-67; D.C. Code, sec. 7-1101 note) ("District act"), is amended as follows:

(a) Section 2 is amended by striking in paragraph (2) the phrase "to be created by the legislatures of the Commonwealth of Virginia and the District pursuant to an agreement or compact that is consistent with the provisions of this act, or, if the Authority to be created is later abolished," and inserting in its place the phrase "created by this act and by similar enactment by the Commonwealth of Virginia, or if the Authority is abolished".

(b) Section 5(h) is amended to read as follows:

"(h) The members of the Authority and its board of review, including any nonvoting members, shall not be personally liable for any act done or action taken in their capacities as members of the Authority or its board of review, nor shall they be personally liable for any bond, note, or other evidence of indebtedness issued by the Authority."

(c) Section 6 is amended:

(1) By striking from paragraph (2) the second appearance of the word "operate";

(2) By inserting in paragraph (5) after the word "committees" the phrase "and to establish a board of review";

(3) By striking from paragraph (10) the phrase "However, the" and inserting in its place the phrase "Employees of the Authority shall not participate in any strike or assert any right to strike against the Authority, and any employment agreement entered into by the Authority shall contain an explicit prohibition against strikes by the employee or employees covered by such agreement. The";

(4) By inserting in paragraph (12) after the word "facilities" the phrase "consistent with the purposes of this act", and by striking from paragraph (12) after the word "Authority" the phrase "and consistent with the purposes of this act";

(5) By inserting in paragraph (13) after the word "users," the phrase "including contracts for normal governmental services on a reimbursable basis with local political subdivisions where the Authority facilities are situated and with the District of Columbia government,";

(6) By striking at the end of paragraph (14) the word "and";

(7) By adding a new paragraph (15a) to read as follows:

"(15a) To make payments to reimburse the local political subdivisions where the Authority facilities are situated for extraordinary law enforcement costs incurred by such localities; and"; and

(8) By adding a new subsection (a-1) to read as follows:

"(a-1) Pursuant to section 6007(b) of the Metropolitan Washington Airports Act of 1986, approved October 30, 1986 (100 Stat. 3341; 49 U.S.C. app. 2456), the

Authority is established solely to operate and improve both metropolitan Washington airports as primary airports serving the metropolitan Washington area and shall be independent of the Commonwealth of Virginia and its local political subdivisions, the District of Columbia, and the federal government in the performance and exercise of the airport-related duties and powers enumerated in this section. Any conflict between the exercise of these enumerated powers by the Authority and the powers of any local political subdivision within which Authority facilities are situated shall be resolved in favor of the Authority.”.

(d) Section 7 is amended:

(1) By striking in paragraph (b)(2) the phrase “in the political subdivision where the Authority's facilities are located and the District” and inserting in its place the phrase “in the District of Columbia and in the local political subdivisions of the Commonwealth of Virginia where the Authority facilities are located”;

(2) By striking in subsection (d) the last sentence; and

(3) By adding new subsections (e), (f), (g), (h), and (i) to read as follows:

“(e) The violation of any rule or regulation of the Authority establishing a noise limitation on aircraft that operate at the Authority Facilities shall subject the violator, in the discretion of the circuit court of any political subdivision where the facility is located to a civil penalty not to exceed \$2,500 for each violation. The penalty shall be paid to the Authority. With the consent of the violator or the accused violator of a rule establishing aircraft noise limits, the Authority may provide, in an order issued against the violator or accused violator, for the payment of civil charges in specific sums not to exceed the limit that could be imposed by the court. Such civil charge when paid shall be in lieu of any civil pen-

alty that could be imposed by the court. Any court proceeding shall be within the exclusive jurisdiction of the circuit court and shall be a civil proceeding at law brought by the Authority.

“(f) The violation of any Authority rule or regulation, having the force and effect of law, shall be a Class 1 misdemeanor unless otherwise specified by chapter 598 of the 1985 Acts of Assembly or unless a lesser penalty is set by the Authority in the rule or regulation. The rules of criminal procedure and evidence that apply throughout the Commonwealth of Virginia (“Commonwealth”) shall apply to the adjudication of any case involving the violation of any Authority rule or regulation having the force and effect of law.

“(g) The courts of the Commonwealth shall take judicial notice of the Authority's regularly adopted rules and regulations. For the convenience of the courts which may regularly hear cases arising under the Authority's rules and regulations, the Authority may certify to the clerk of such court a copy of its rules and regulations. Any such certification, when signed by the chairman of the Metropolitan Washington Airport Authority, shall be accepted as evidence of the facts therein stated.

“(h) With respect to the violation of any statute of the Commonwealth, local ordinance, or Authority rule or regulation having the force and effect of law occurring at the Authority Facilities:

“(1) The matter shall be within the jurisdiction of the state courts of the political subdivision where the violation occurred; violations occurring at Washington National Airport shall be within the jurisdiction of the courts for Arlington County;

“(2) The attorney for the Commonwealth shall have authority to prosecute those offenses in the name of the Commonwealth or local government as appropriate; and the county or city attorney, if otherwise authorized to

prosecute offenses in the name of the county or city, shall have authority to prosecute those offenses in the name of the county or city; and

"(3) Sheriffs and clerks of the court shall provide those same services and exercise those same powers with respect to Authority Facilities within their jurisdiction as for their political subdivisions.".

(e) Section 8 is amended to read as follows:

**"Sec. 8. Police powers.**

"(a) The Authority is authorized to establish and maintain a regular police force and to confer police powers to be exercised with respect to offenses occurring on the Authority Facilities upon its employees meeting the minimum requirements of the Commonwealth of Virginia's Department of Criminal Justice Services.

"(b) Such police officers shall have all powers vested in police officers under Chapter 3 of Title 15.1, Chapter 11 of Title 16.1, Title 18.2, and Title 46.1 of the Code of Virginia and shall be responsible upon the Authority Facilities and within 300 yards of the Facilities for enforcing the laws of the Commonwealth, the Authority's rules and regulations, and all other applicable ordinances, rules, and regulations.

"(c) The police officers may issue summons to appear, or arrest on view or on information without warrant as permitted by law, and conduct before any judicial officer of competent jurisdiction any person violating, upon Authority Facilities, any rule or regulation of the Authority, any ordinance or regulation of any local political subdivision, or any other law of the Commonwealth.

"(d) The Department of State Police shall exercise the same powers upon Authority Facilities as elsewhere in the Commonwealth.

"(e) The Authority may enter into reciprocal or mutual aid agreements with the local political subdivisions

in which the Authority Facilities are situated, any agency of the Commonwealth, or of the federal government, or any combination of the foregoing, for cooperation in the furnishing of police services.

"(f) The police force of Arlington County shall have concurrent jurisdiction with the police force established herein at Washington National Airport. The Authority shall enter into an agreement with Arlington County regarding the exercise of police authority.

"(g) The sheriffs and police forces of Loudon and Fairfax Counties shall continue to exercise concurrent jurisdiction with the police force established herein over the Authority Facilities situated within their respective counties.".

(f) Section 28 is amended by striking the phrase "an Airports Authority created by the legislatures of the Commonwealth of Virginia and the District pursuant to an agreement or compact that consistent with the provisions of this act, whichever occurs later.", and inserting in its place the phrase "the Authority.".

Sec. 4. This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-233(c)(1)).

/s/ David Clarke  
Chairman  
Council of the District of Columbia

/s/ Marion Barry  
Mayor  
District of Columbia  
Approved: June 1, 1987

BYLAWS  
of the  
METROPOLITAN WASHINGTON  
AIRPORTS AUTHORITY

As Constituted and Accepted by Vote of the  
Board of Directors on March 4, 1987

ARTICLE I

Organization of the Authority

**Section 1. *Board of Directors.*** Pursuant to Chapter 598, 1985, Virginia Acts of Assembly and the Regional Airports Authority Act of 1985, D.C. Law 6-67, all powers, rights and duties conferred upon the Metropolitan Washington Airports Authority shall be vested in a Board of Directors, hereinafter referred to as the "Board." Individual Members of the Board shall be referred to as "Directors."

a. There shall be eleven Directors: five appointed by the Governor of the Commonwealth of Virginia, three appointed by the Mayor of the District of Columbia, two appointed by the Governor of the State of Maryland, and one appointed by the President of the United States.

b. Directors shall (i) not hold elective or appointive public office, (ii) serve without compensation except that the Directors shall be entitled to reimbursement of their expenses incurred in attendance upon the meetings of the Authority or while otherwise engaged in the discharge of their duties, and (iii) reside within the Washington Standard Metropolitan Statistical Area, except

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that the Director appointed by the President of the United States shall not be required to reside in that area.

c. Appointments to the Authority shall be for a period of six years. However, initial appointments shall be made as provided by law.

d. Each Director may be removed or suspended from office only for cause, and in accordance with the laws of the jurisdiction from which he is appointed.

e. The Directors of the Authority shall continue to serve until their successors shall be duly appointed and qualified. Any person appointed to fill a vacancy shall serve for the unexpired term. Any Director of the Authority shall be eligible for reappointment for one term.

**Section 2. *Officers.*** The Board shall annually elect from its membership a Chairperson and Vice-Chairperson and may elect from its membership, or appoint or employ from its staff, a Secretary and a Treasurer or a Secretary/Treasurer, and prescribe the powers and duties of each officer, and it may appoint from the staff an Assistant Secretary and an Assistant Treasurer, or an Assistant Secretary/Treasurer, who shall, in addition to other duties, discharge such functions of the Secretary and Treasurer, respectively, as may be directed by the Board.

**Section 3. *Term of Office.*** All officers, as long as they continue to serve as a Director or staff, shall hold office until the next annual meeting of the Board, or until their successors are elected or appointed and qualified, whichever may be the later.

ARTICLE II

Duties of the Board

The Board shall provide direction to the Authority in order to acquire, maintain, develop, promote and protect Washington National and Washington Dulles Interna-

tional Airports. The Board shall promote good air transportation facilities with timely improvements at both airports. The Board shall see that the laws pertaining to the purposes and functions of the Authority are faithfully observed and executed. The Board will employ staff and adopt appropriate procedures to carry out those duties.

### ARTICLE III

#### Powers and Duties of the Officers of the Board

**Section 1. *The Chairperson.*** The Chairperson shall preside at all meetings of the Board; shall appoint all Committees and the Chairpersons thereof; shall serve as an ex officio member of all committees; shall execute documents on behalf of the Authority as prescribed by the Board and shall perform such other duties as the Board may from time to time direct.

**Section 2. *Vice-Chairperson.*** The Vice-Chairperson shall perform the duties and have the powers of the Chairperson during the absence or incapacity of the Chairperson from any cause. A certification by any six Directors as to such absence or incapacity from any regular or special meeting shall be conclusive evidence thereof.

**Section 3. *Secretary.*** The Secretary shall be the custodian of all records and of the Seal of the Authority and shall keep accurate minutes of the meetings of the Board. The Secretary shall have the authority to cause copies to be made of all minutes and other records and documents of the Authority and to certify under the official seal of the Authority that such copies are true copies. The Secretary shall affix the Seal of the Authority to legal instruments and documents as required. Secretary shall cause notice to be given to all meetings of the Authority as required by law or by these Bylaws and distribute the agenda and related materials not less than 48 hours before the regular meetings of the Board. The Secretary, if a Director, shall become, ex officio, the Act-

ing Chairperson in the event the offices of Chairperson and Vice-Chairperson are both vacant, or in the event that the Chairperson and the Vice-Chairperson are both unable to perform their duties by reason of absence or incapacity.

**Section 4. *Treasurer.*** Except as may be required in any instrument under which any revenue or other bonds are issued by the Authority, the Treasurer shall have the care and custody of and shall be responsible for all monies of the Authority from whatever sources received. The Treasurer shall be responsible for the deposit of such monies in the name of the Authority in a bank or banks approved by the Board and shall be responsible for the disbursements of such funds for purposes authorized or intended by the Board. The Treasurer, and any Assistant Treasurer, shall be bonded in an amount and with surety acceptable to the Board and shall make periodic accountings for all such funds as determined by the Board. The Treasurer's books shall be available for inspection by any Director of the Board during business hours.

**Section 5. *Other Duties.*** In addition to the duties and powers herein set forth, the Chairperson, the Vice Chairperson, the Secretary and the Treasurer shall each have the duties and powers as are commonly incident to their offices and such duties as may be imposed by law or as the Authority may from time to time by resolution specify.

### ARTICLE IV

#### Board of Review

**Section 1. *Establishment and composition.*** The Board of Directors shall establish a nine-member Board of Review of the Airports Authority and appoint to it representatives of the users of the Metropolitan Washington Airports who will serve in their individual capacities. The Board of Directors shall appoint:

a. Two members of the Public Works and Transportation Committee and two members of the Appropriations Committee of the U.S. House of Representatives from a list or lists of recommended appointees provided by the Speaker of the House;

b. Two members of the Commerce, Science, and Transportation Committee and two members of the Appropriations Committee of the U.S. Senate from a list or lists of recommended appointees provided by the President pro tempore of the U.S. Senate; and

c. One member chosen alternately from a list provided by the Speaker of the house or the President pro tempore of the Senate, respectively.

The Board of Directors may not appoint a member of the House of Representatives or the Senate from Maryland or Virginia, or the Delegate from the District of Columbia, to the Board of Review. The members of the Board of Review shall elect a chairman.

**Section 2. Terms.** Members of the Board of Review appointed as provided above shall be appointed for six years, except that of the members first appointed, one member under each of paragraphs (a) and (b) of Section 1 shall be appointed for a term of two years and one member under each of paragraphs (a) and (b) of Section 1 shall be appointed for a term of four years. Members of the Board of Review appointed under paragraph (c) of Section 1 shall be appointed for terms of two years. The Board shall fill a vacancy in the Board of Review in the same manner in which the original appointment was made. Any member appointed to fill a vacancy before the expiration of the term of which his or her predecessor was appointed shall be appointed only for the remainder of such term.

**Section 3. Procedures.** The Board of Review shall establish procedures for conducting its business. The procedures may include requirements for a quorum at meet-

ings and for voting by proxy. Proxies may only be given to other members of the Board of Review. The Board shall meet at least once each year and shall meet at the call of its chairman or three of its members of the Board. Also, the Board of Directors may call, with at least one week's notice, meetings of the Board of Review. Any decision of the Board of Review under sections 4 or 5 shall be by vote of five members.

**Section 4. Approval procedure.** The Board of Directors shall submit the following actions to the Board of Review at least thirty (30) days (or at least sixty (60) days in the case of the annual budget) before they are to become effective:

- a. the adoption of an annual budget;
- b. the authorization for the issuance of bonds;
- c. the adoption, amendment, or repeal of a regulation;
- d. the adoption or revision of a master plan, including any proposal for land acquisition; and
- e. the appointment of the chief executive officer.

If the Board of Review does not disapprove an action within thirty (30) days of its submission the action may take effect. If the Board of Review disapproves any such action, it shall notify the Board of Directors and shall give reasons for the disapproval. An action disapproved under this paragraph shall not take effect.

**Section 5. Effect of disapproval.** Unless an annual budget for a fiscal year has taken effect in accordance with section 4, the Airports Authority shall not obligate or expend any money in such fiscal year, except for (1) debt service on previously authorized obligations, and (2) obligations and expenditures for previously authorized capital expenditures and routine operating expenses.

**Section 6. Request for consideration for other matters.** The Board of Review may request the Board of Directors

to consider and vote, or to report, on any matter related to the Metropolitan Washington Airports. Upon receipt of such a request the Board of Directors will consider and vote, or report, on the matter as promptly as feasible.

*Section 7. Participation in meetings of the Airports Authority.* Members of the Board of Review may participate as nonvoting members in meetings of the Board of Directors.

*Section 8. Staff.* The Board of Review may hire two staff persons to be paid by the Airports Authority. The Airports Authority shall provide such clerical and support staff as the Board of Review may require. The staff shall be employees of the Airports Authority.

*Section 9. Limitation on Board actions.* If the Board of Review is unable to function as described in this Article by reason of a judicial order, the Board of Directors may continue to take all actions other than those which must be submitted to the Board of Review under section 4 above.

## ARTICLE V

### Chief Executive Officer, and Other Employees

*Section 1. Chief Executive Officer.* The Board shall appoint a Chief Executive Officer who shall be the Chief Executive Officer of the Authority. He or she shall, except as otherwise provided by the Board, be in charge of management and all operations of the airports and any other activities of the Authority as prescribed by the Board. The Chief Executive Officer shall sign documents on behalf of the Authority as prescribed by the Board. The Chief Executive Officer shall discharge his or her duties as directed by the Board.

*Section 2. Employees.* The Chief Executive Officer shall present the Board with a plan for staffing the airports. All selections for positions reporting directly to

the Chief Executive Officer shall be subject to approval by the Board.

## ARTICLE VI

### Offices, Books and Records

*Section 1. Offices.* The Board shall establish the principal office of the Authority at Washington National Airport or Washington Dulles International Airport.

*Section 2. Books and Records.* Except as may be otherwise required or permitted by resolution of the Board, or as the business of the Authority may from time to time require, all of the books and records of the Authority shall be kept at its principal office. Such books and records shall be available during ordinary business hours for inspection by any member of the public.

*Section 3. Minutes.* All approved minutes of Board meetings other than those of an executive session shall be open to public inspection during ordinary business hours.

## ARTICLE VII

### Meetings of the Board

*Section 1. Regular Meetings.* A regular meeting of the Board shall be held without call or formal notice at the principal office of the Authority on the first Wednesday of every month at 9 a.m., except that in any case in which such day shall be a legal holiday, or for any other reason inappropriate as a meeting day, the regular meeting shall be held on such other day as may be determined by at least six (6) Directors after consultation with all of the Directors and upon the provision of seventy-two (72) hours notice to the Secretary. The Secretary shall notify all of the Directors upon receipt of such notice.

*Section 2. Annual Meeting.* The regular meeting held in the month of September in each year shall be the annual meeting for the election of a Chairperson, Vice-

Chairperson, Secretary and a Treasurer. If the annual meeting is omitted, a special meeting shall be held in lieu thereof as soon as practicable, and all elections held and action taken thereat shall have the same effect as if held or taken at the annual meeting.

**Section 3. Special Meetings.** Special meetings may be called at any time by the Chairperson. Upon receipt of a written request for a special meeting from any six (6) Directors, the Chairperson must call a meeting. Written notice of each special meeting, specifying the time and place of the meeting, and the purpose or purposes of the meeting, shall be given to the Directors by the Secretary. Notice shall be deemed sufficient if sent by mail at least seventy-two (72) hours in advance of the date and time of the meeting or by telegram or otherwise in writing within twenty-four (24) hours before the time of the meeting, if given to the Directors in person. Formal notice to any person shall not be required provided all Directors are present or those not present shall have waived notice in writing, filed with the records of the meeting, either before or after the meeting.

**Section 4. Information.** Information as to the time and place of each meeting shall be furnished to any person who requests such information. Requests to be notified on a continual basis shall be made at least once a year in writing.

## ARTICLE VIII

### Quorum

**Section 1. Quorum.** Six Directors shall constitute a quorum for the transaction of all business.

**Section 2. Majority Voting.** Action by the Board shall be by a simple majority vote of the Directors present and voting except where otherwise provided by the Bylaws. Seven affirmative votes shall be required to approve bond issues and the annual budget of the Authority.

## ARTICLE IX

### Transaction of Business

**Section 1. Regular and Special Meetings.** Any business of the Authority may be considered at any regular meeting of the Authority. Only items of business identified in the agenda distributed by the Secretary forty-eight (48) hours in advance of the meeting may be acted upon at a regular meeting. Other matters may be acted upon if a majority of the Board of Directors votes to waive this notice provision. When notice of a special meeting is sent, only matters specified or described in the notice may be considered at the special meeting, except that with the unanimous consent of the Directors present any other matter be considered.

**Section 2. Order of Business.** Unless waived by a vote of six or more Directors, the order of business at a meeting of the Board shall be:

- a. Approval of the minutes of the previous meeting.
- b. Report of Chief Executive Officer and staff.
- c. Unfinished business.
- d. New business.
- e. Other business and adjournment.

**Section 3. Executive Session.** All regular and special meetings of the Board shall be open to the public except that at any time a majority of the Directors present may affirmatively vote to consider a matter or matters in the categories described below in executive session which will be closed to the public. Any motion to meet in executive session must identify in general terms the subject or subjects to be considered and identify the subsection below under which the executive session is authorized. The following items or matters may be considered and acted upon by the Board, and appropriate officers and staff, in the executive session:

a. Personnel matters such as the discussion or consideration of: Employment, appointment, assignment, promotion, demotion, performance appraisal, discipline, resignation, salaries and benefits, and interviews of Directors, officers, and employees of the Authority, and applicants for the same.

b. Personal matters not directly related to the Authority's business in order to protect the privacy of individuals.

c. Discussion of existing, or prospective, contracts, business or legal relationships to protect proprietary or confidential information of any person or company, the financial interest of the Authority, or the negotiating position of the Authority.

d. The investing of Authority funds where competition or negotiation is involved to protect the financial interests of the Authority or the negotiating position of the Authority.

e. Consultation with legal counsel and briefings by staff, consultants and/or attorneys, pertaining to actual or potential litigation, pending or proposed legislation, compliance with a specific constitutional, statutory or judicially imposed requirement, or other legal matters, and discussions of such matters by the Board without the presence of counsel, staff, consultants, or attorneys.

**Section 4. Actions in Executive Session.** No resolution, contract, or motion, adopted, passed or agreed to in an executive session, other than a request to the staff for information, shall become effective unless the Board, at an appropriate time following such session, reconvenes in public or open session and takes a vote of the Directors on such resolution, contract, or motion and the subject of the resolution, contract, or motion shall be reasonably identified in the open session. This shall not be construed to require the Board to divulge information that is proprietary or actions which are not final.

**Section 5. Other Business.** After completion of the agenda, the Chairperson, Directors, or the Chief Executive Officer may, for information purposes, place any matter or matters on the agenda or other business which they deem to require the attention of the Board.

**Section 6. Procedure.** Roberts Rules of Order, as amended, shall be the authority for all matters of procedure not otherwise covered by these Bylaws. A point of order as to procedure raised by any Director in the course of a regular or special meeting shall be resolved by a ruling of the Chairperson. The vote of a majority of the Directors present shall be required to overrule the Chairperson.

## ARTICLE X

### Directives and Regulations

**Section 1. General.** The Board will adopt, amend and repeal as necessary: 1) internal directives and procedures for operating the airports, including delegations of authority, and 2) regulations which may have the force and effect of law, pertaining to the use, maintenance and operation of its facilities and governing the conduct of persons and organizations using its facilities.

**Section 2. Regulatory procedure.** Unless the Board determines that an emergency exists by unanimous vote of all Directors present, the Board shall, prior to the adoption of any regulation or alteration, amendment, or modification thereof:

a. Make such regulation or amendment thereof in convenient form available for public inspection in the office of the Authority for at least ten days.

b. Publish a notice in a newspaper or newspapers of general circulation in the District of Columbia, Montgomery County and Prince George's County, Maryland, and in the local political subdivisions of the Common-

wealth of Virginia where the Authority facilities are located declaring the Authority's intention to consider adopting such regulation or amendment thereof and informing the public that the Authority will hold a public hearing at which any person may appear and be heard for or against the adoption of such regulation or such alteration, amendment, or modification, on a day and at a time to be specified in the notice, after the expiration of at least ten days from the day of the publication thereof; and

c. Hold the public hearing, or appoint a hearing officer to hold a public hearing, on the day and at the time specified in such notice or any adjournment thereof, and hear persons appearing for or against such regulation or amendment thereof.

d. In accordance with the Metropolitan Washington Airports Act of 1986, adoption by the Board of the regulations of the Federal Aviation Administration which govern the airports at the time the airports are transferred to the Authority shall not be subject to this procedure.

**Section 3. *Inspection of regulations.*** The Authority's regulations shall be available for public inspection in the Authority's principal office.

**Section 4. The Authority's regulations relating to**

a. Air operations and motor vehicle traffic, including, but not limited to, motor vehicle speed limits and the location of and payment for public parking;

b. Access to and use of Authority Facilities, including but not limited to solicitation, handbilling, picketing and the conduct of commercial activities; and

c. Aircraft operation and maintenance;

shall have the force and effect of law, as shall any other regulation of the Authority which shall contain a determination by the Authority that it is necessary to accord

the same force and effect of law in the public interest; provided, however, that with respect to motor vehicle traffic rules and regulations, the Board will obtain the approval of the traffic engineer or comparable official of the local political subdivision in which such rules or regulations are to be enforced.

Section 5. The Board shall establish the effective date of its regulatory actions consistent with Article IV of these bylaws.

## ARTICLE XI

### Miscellaneous

**Section 1. *Code of Ethics.*** The Board shall adopt a code of ethics and financial disclosure to assure the integrity of all decisions by the Board, its Board of Review, and employees of the Authority. The code shall provide that each Director and his/her immediate families may not hold a substantial financial interest in any enterprise that has or is seeking a contract or agreement with the Airports Authority or is an aeronautical, aviation services, or airport services enterprise that otherwise has interests that can be directly affected by the Airports Authority. Exceptions may be made if the financial interest is fully disclosed to the Board and the Director does not participate in Board decisions that directly affect such interest.

**Section 2. *Indemnity.*** The Authority shall indemnify each Director and Officer against all costs and expenses (including counsel fees) actually incurred by him in connection with or resulting from any action, suit or proceeding, of whatever nature, to which he is or shall be made a party by reason of his being or having been a Director or Officer of the Authority, provided 1) that the Director or Officer conducted himself in good faith and 2) reasonably believed that his conduct was in the best interest of the Authority. This indemnity shall not apply

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in actions when the Director or Officer is adjudged liable to the Authority.

Section 3. *Minority participation.* The Board shall develop and adopt a policy for providing minority participation in the contracts of the Authority.

## ARTICLE XII

### Amendments

These Bylaws may be amended or repealed in whole or in part by resolution of the Board adopted by at least seven (7) Directors at any regular meeting or special meeting, provided that notice of intention to present such resolution shall be given to all Directors at least two (2) days in advance of the meeting at which the motion to adopt such resolution is to be made. Such notice shall be given by any Director, or by the Secretary at the request of any Directors, and shall specify the subject matter of the proposed amendment or repeal. The notice of intention to amend or repeal these Bylaws shall include a specific reference to the Article subject to the proposed amendment or repeal, together with the suggested change.

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LEASE

of the

METROPOLITAN WASHINGTON AIRPORTS

between

THE UNITED STATES OF AMERICA

acting by and through

THE SECRETARY OF TRANSPORTATION

and

THE METROPOLITAN WASHINGTON  
AIRPORTS AUTHORITY

ENTERED INTO AT WASHINGTON,  
DISTRICT OF COLUMBIA

THIS SECOND DAY OF MARCH,  
1987

[In Relevant Part]

**AGREEMENT  
AND DEED OF LEASE**

March 2, 1987

Agreement and Deed of Lease between the United States of America, acting by and through the Secretary of Transportation ("the Secretary"), and the Metropolitan Washington Airports Authority ("the Airports Authority"), a public body politic and corporate created by compact between the Commonwealth of Virginia and the District of Columbia with the consent of the Congress.

WHEREAS, in the Metropolitan Washington Airports Act of 1986, Title VI of Public Law 99-591 ("the Act"), the Congress declared its purpose to be to authorize the transfer of operating responsibility under a long-term lease of the Metropolitan Washington Airport properties as a unit, including access highways and other related facilities, to a properly constituted independent airport authority created by the Commonwealth of Virginia and the District of Columbia, in order to achieve local control, management, operation, and development of these important transportation assets;

WHEREAS, the Act authorized the Secretary to enter into such a lease in order to enable the financing of badly needed capital improvements;

WHEREAS, in Chapter 598, Virginia Acts of Assembly, 1985, as it may be amended, and in the District of Columbia Regional Airports Authority Act of 1985, D.C. Law 6-67, as it may be amended, the Commonwealth of Virginia and the District of Columbia, respectively, enacted essentially identical laws to create the Airports Authority to acquire the Metropolitan Washington Airports from the United States, by lease or otherwise;

WHEREAS, the Congress has found that the two federally owned airports in the metropolitan area of Washington, District of Columbia constitute an important and

growing part of the commerce, transportation and economic patterns of the Commonwealth of Virginia, the District of Columbia, and the surrounding region;

WHEREAS, the Congress has found that the Federal Government has a continuing but limited interest in the operation of the two federally owned airports serving the travel and cargo needs of the entire Metropolitan Washington region as well as the District of Columbia as the national seat of government;

WHEREAS, the Congress has found that operation of the Metropolitan Washington Airports by an independent local agency will facilitate timely improvements at both airports to meet the growing demand of interstate air transportation occasioned by the Airline Deregulation Act of 1978;

WHEREAS, the Congress has found that all other major air carrier airports in the United States are operated by public entities at the State, regional or local level;

WHEREAS, the Congress has found that any change in the status of the two airports must take into account the interest of nearby communities, the traveling public, air carriers, general aviation, airport employees, and other interested groups, as well as the interests of the Federal Government and the State governments involved;

WHEREAS, the Congress has found that an operating authority with representation from local jurisdictions, similar to authorities at all major airports in the United States, will improve communications with local officials and concerned residents regarding noise at the Metropolitan Washington Airports; and

WHEREAS, the Congress has found that the Federal interest in these airports can be provided through a lease mechanism which provides for local control and operation.

NOW THEREFORE, under the authority of the Metropolitan Washington Airports Act of 1986, Title VI of Public Law 99-591, 100 Stat. 3341; Chapter 598, Virginia

Acts of Assembly, 1985, as it may be amended; and the District of Columbia Regional Airports Authority Act of 1985, D.C. Law 6-67, as it may be amended; the parties do hereby agree as follows, for themselves and for their successors:

**Article 1. Definitions.**

The following terms when used in this lease shall have the meanings indicated below:

**1.A. Act**

The term "Act" means the Metropolitan Washington Airports Act of 1986, Title VI of Public Law 99-591, 100 Stat. 3341.

**1.B. Airports**

The term "Airports" means the Metropolitan Washington Airports.

**1.C. Airports Authority**

The term "Airports Authority" means the Metropolitan Washington Airports Authority, a public body created by the Commonwealth of Virginia and the District of Columbia.

**1.D. Airport Purposes**

The term "Airport Purposes" means a use of property interests (other than a sale) for aviation business or activities, or for activities necessary or appropriate to serve passengers or cargo in air commerce, or for non-profit, public use facilities.

**1.E. Board of Directors**

The term "Board of Directors" means the Board of Directors of the Airports Authority.

**1.F. Board of Review**

The term "Board of Review" means the Board of Review of the Airports Authority established by the Board of Directors.

**1.G. Employees**

The term "Employees" means all permanent Federal Aviation Administration personnel employed on the date this lease takes effect by the Metropolitan Washington Airports, an organization within the Federal Aviation Administration, U.S. Department of Transportation.

**1.H. Leased Premises**

The term "Leased Premises" means the real property described in paragraph 3.A. hereof.

**1.I. Master Plan**

The term "Master Plan" means a generalized, comprehensive plan for the physical development of Washington National Airport or Washington Dulles International Airport as may be revised from time to time by the Airports Authority.

**1.J. Metropolitan Washington Airports**

The term "Metropolitan Washington Airports" means Washington National Airport and Washington Dulles International Airport.

**1.K. Secretary**

The term "Secretary" means the Secretary of Transportation of the United States, or her successor.

**1.L. Washington Dulles International Airport**

The term "Washington Dulles International Airport" means the airport constructed under the act entitled "An Act to authorize the construction, protection, operation, and maintenance of a public airport in or in the vicinity of the District of Columbia", approved September 7, 1950 (64 Stat. 770), and includes the Dulles Airport Access Highway and Right-of-way, including the extension between the Interstate Routes I-495 and I-66.

**1.M. Washington National Airport**

The term "Washington National Airport" means the airport described in the act entitled "An Act to provide

for the administration of the Washington National Airport, and for other purposes", approved June 29, 1940 (54 Stat. 686).

#### *Article 2. Purpose.*

The purpose of this lease is to transfer the operating responsibility for the Metropolitan Washington Airports to the Metropolitan Washington Airports Authority pursuant to the Act and to make the conditions imposed therein upon the authority of the Secretary to enter into a lease of the Metropolitan Washington Airports applicable to the Airports Authority.

#### *Article 3. Leased Premises.*

##### *3.A. Grant of Lease.*

The Secretary, on behalf of the United States of America, hereby demises and leases to the Airports Authority the two Metropolitan Washington Airport properties as a unit, including access highways and other related facilities, being the parcels of land, together with all right, title and interest, if any, of the Secretary in and to any street or road abutting or included within the described land, and all rights of way, easements, licenses and permits relating thereto, and all improvements thereon, bounded and described in *Appendix A*.

##### *3.B. Scope.*

The Airports Authority is hereby authorized to occupy, operate, control and use, for the term of this lease all land, improvements, buildings, fixtures, easements, rights of ingress and egress and appurtenances thereto belonging, owned by, used or controlled by or assigned to the United States of America on or at the Leased Premises. Subject to the provisions of this lease, the Airports Authority shall have, consistent with the 50-year minimum term of this lease, full power and dominion over, and complete discretion in, operations and development of the

Airports, and shall have the same proprietary powers and be subject to the same restrictions with respect to federal law as any other airport, except as otherwise provided herein.

##### *3.C. Warranty of Title.*

The Secretary hereby warrants and covenants on behalf of the United States of America that the United States of America is the owner of good, fee simple and marketable title to all of the Leased Premises, free and clear of all liens, debts, encumbrances or restrictions of whatsoever kind, nature and description, other than leases and easements presently in effect that do not adversely affect the operation of the Airports, and the Secretary has full power and authority to convey the interests described in this lease in accordance with the provisions hereof.

##### *3.D. Quiet Enjoyment.*

The Secretary covenants on behalf of the United States of America that, during the period commencing on the effective date of this lease and ending on the expiration of the term of this lease in accordance with the terms hereof, the Airports Authority shall fully, peaceably and quietly occupy and enjoy the full possession of the Leased Premises without hindrance or interference by the Secretary or any other person or entity.

#### *Article 4. Transfer of Personal Property.*

The Secretary, on behalf of the United States of America, hereby grants, transfers and conveys to the Airports Authority, without condition (and not as a lease), all right, title and interest in and to all equipment, materials, furnishings and all other personal property appurtenant to or located on the Leased Premises, excluding personal property necessary for the Secretary's Air Traffic Control responsibilities, and including, but not limited to, the items specifically described in the inventory to be com-

pleted before the effective date of this lease and identified as "Inventory for Metropolitan Washington Airports." Such personal property is transferred in "as is" condition and the Secretary makes no warranties as to the suitability of any such property for any particular use.

\* \* \* \*

#### *Article 9. Effective Date.*

This lease shall be effective on the date on which the Secretary and the Airports Authority certify that the Governor of Virginia and the Mayor of the District of Columbia have approved the lease and that all conditions in Articles 15 and 20 have been satisfied.

#### *Article 10. Term and Extensions.*

##### *10.A. Term.*

The term of this lease shall be for fifty years commencing on the effective date as determined under Article 9.

##### *10.B. Lease Extensions.*

The Secretary and the Airports Authority may at any time negotiate an extension of this lease.

##### *10.C. Good Faith Negotiation.*

In the event that the Airports Authority reasonably shall determine that an extension of the term of this lease is required in order to entitle the Airports Authority to amortize the indebtedness that will result from the financing of any improvements at the Airports over a period equal to the estimated useful life of such improvements, the parties agree to negotiate in good faith a commensurate extension of such term.

##### *10.D. Expiration.*

Upon the expiration of this lease, the Airports Authority covenants and agrees that it will give up, surrender and deliver to the Secretary the Leased Premises to-

gether with all buildings, structures and improvements thereon (as the same may have been altered or replaced), as well as all personal property, furniture, fixtures and other equipment contained therein and used exclusively in connection with the operation of the Airports, the intent being that when the Leased Premises are returned to the Secretary, such Leased Premises shall be in good condition as operating airports, depreciation, obsolescence, and ordinary wear and tear excepted, all of which shall be free and clear of any and all liens, debts or encumbrances which would necessitate payment by the Secretary.

#### *Article 11. Continuing Obligations.*

##### *11.A. Airports Authority's Legal Status.*

The Airports Authority is a public body corporate and politic that meets the requirements of section 6007 of the Act. The Airports Authority agrees to refrain from action that would alter such status and to use its best efforts to maintain this status.

##### *11.B. Operation of Airports.*

The Airports Authority shall operate, maintain, protect, promote, and develop the Metropolitan Washington Airports as a unit and as primary airports serving the Metropolitan Washington area.

##### *11.C. Airport Improvement Program Requirements.*

The Airports Authority shall be subject to the requirements of section 511(a) of the Airport and Airway Improvement Act of 1982 (hereinafter the "1982 Act") and the assurances and conditions required of grant recipients under the 1982 Act as of the date the lease takes effect, to the same extent as would be an airport that received a grant under the 1982 Act on the effective date of this lease. As in the case of any other airport, any such assurance which, by its terms, is project specific shall apply only to projects on which Federal grant funds are

expended. Notwithstanding section 511(a)(12) of the 1982 Act, all revenues generated by the Metropolitan Washington Airports shall be expended for the capital and operating costs of the Airports.

**11.D. Contracts.**

In acquiring by contract supplies or services for an amount estimated to be in excess of \$200,000, or awarding concession contracts, the Airports Authority shall obtain, to the maximum extent practicable, full and open competition through the use of published competitive procedures. By a vote of seven members, the Airports Authority may grant exceptions to the requirements of this paragraph.

**11.E. Continuation of Regulations.**

All regulations applicable to the Metropolitan Washington Airports and included in Part 159 of the Federal Aviation Regulations, 14 C.F.R. Part 159, on the effective date of this lease shall become regulations of the Airports Authority on that date and shall remain in effect until modified or revoked by the Airports Authority in accordance with procedures of the Airports Authority.

**11.F. Limitations on Aircraft Operations.**

(1) The Airports Authority shall not increase or decrease the number of instrument flight rule takeoffs and landings authorized by the High Density Rule (14 C.F.R. 93.121 et seq.) at Washington National Airport as in effect on October 18, 1986, and shall not, after the effective date of this lease, impose a limitation on the number of passengers taking off or landing at Washington National Airport.

(2) The Airports Authority agrees that any action changing or having the effect of changing the hours of operation of or the type of aircraft serving either of the Metropolitan Washington Airports may be taken only by

adoption of or amendment to regulations of the Airports Authority.

**11.G. Assumption of Rights, Liabilities and Obligations.**

(1) *In General.* Except as provided in subparagraph 2 of this paragraph, the Airports Authority hereby agrees that it shall assume all rights, liabilities, and obligations (tangible and incorporeal, present and executory) of the Secretary with respect to the Metropolitan Washington Airports organization of the Federal Aviation Administration on the effective date of this lease, including leases, permits, licenses, contracts, agreements, claims, tariffs, accounts receivable, accounts payable, and litigation relating to such rights and obligations, regardless whether judgment has been entered, damages awarded, or appeal taken. To the extent practicable, the Secretary shall provide at the effective date of this lease a summary list of the foregoing which involve material obligations.

(2) *Exceptions.* The procedure for disputes resolution contained in any contract entered into on behalf of the United States before the effective date of this lease shall continue to govern the performance of the contract unless otherwise agreed to by the parties to the contract. Claims for monetary damages founded in tort, by or against the United States as the owner and operator of the Metropolitan Washington Airports, arising before the date the lease takes effect shall be adjudicated as if the lease had not been entered into.

(3) *Payments Into Employee Compensation Fund.* The Federal Aviation Administration, and not the Airports Authority, shall be responsible for reimbursing the Employees' Compensation Fund, pursuant to section 8147 of title 5, United States Code, for compensation paid or payable after the effective date of this lease in accordance with chapter 81 of title 5, United States Code, with regard to any injury, disability, or death due to events aris-

ing before such date, whether or not a claim has been filed or is final on such date.

*11.H. Use of Certain Revenues.*

No landing fee imposed for operating an aircraft or revenues derived from parking automobiles—

(1) at Washington Dulles International Airport may be used for maintenance or operating expenses (excluding debt service, depreciation, and amortization) at Washington National Airport; or

(2) at Washington National Airport may be used for maintenance or operating expenses (excluding debt service, depreciation, and amortization) at Washington Dulles International Airport.

*11.I. General Aviation Fees.*

The Airports Authority shall compute the fees and charges for landing general aviation aircraft at the Metropolitan Washington Airports on the same basis as the landing fees for air carrier aircraft, except that the Airports Authority may require a minimum landing fee not in excess of the landing fee for aircraft weighing 12,500 pounds.

*11.J. Reporting Requirement.*

The Airports Authority agrees to provide annually to the Secretary a written report of any demolition during the previous year of structures conveyed under this lease.

*Article 12. Capital Improvements.*

*12.A. Master Plans.*

The Airports Authority shall assume responsibility for the Federal Aviation Administration's Master Plans for the Metropolitan Washington Airports, including the adoption of the Dulles Master Plan and the Completion of a Master Plan for Washington National Airport, and may revise such Master Plans from time to time or

adopt subsequent Master Plans for the development of the Airports. Major improvements to the Airports shall be consistent with the most recently adopted Master Plans.

*12.B. Improvement Schedule.*

The Airports Authority acknowledges its intent, to the extent practicable, to:

(1) pursue the improvement, construction and rehabilitation of the facilities at Washington Dulles International Airport and Washington National Airport simultaneously; and

(2) cause the improvement, construction, and rehabilitation proposed by the Secretary to be completed at both of such Airports within five years of the earliest date on which the Airports Authority issues bonds or other long-term evidences of indebtedness.

*Article 13. Board of Review.*

*13.A. Establishment and Composition.*

Before taking any actions listed in paragraph 13.D. of this Article, the Board of Directors shall establish a nine-member Board of Review of the Airports Authority and appoint to it representatives of the users of the Metropolitan Washington Airports who will serve in their individual capacities. The Board of Directors shall appoint:

(1) two members of the Public Works and Transportation Committee and two members of the Appropriations Committee of the U.S. House of Representatives from a list or lists of recommended appointees provided by the Speaker of the House;

(2) two members of the Commerce, Science, and Transportation Committee and two members of the Appropriations Committee of the U.S. Senate from a list or lists of recommended appointees provided by the President pro tempore of the U.S. Senate; and

(3) one member chosen alternatively from a list provided by the Speaker of the House or the President pro tempore of the Senate, respectively.

The members of the Board of Review shall elect a chairman. The Board of Directors may not appoint a member of the House of Representatives or the Senate from Maryland or Virginia, or the Delegate from the District of Columbia, to the Board of Review.

#### *13.B. Terms.*

Members of the Board of Review appointed under subparagraphs (1) and (2) of paragraph 13.A. above shall be appointed for six years, except that of the members first appointed, one member under each of subparagraphs (1) and (2) shall be appointed for a term of two years and one member under each of subparagraphs (1) and (2) shall be appointed for a term of four years. Members of the Board of Review appointed under subparagraph (3) of paragraph 13.A. shall be appointed for terms of two years. A vacancy in the Board of Review shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy before the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term.

#### *13.C. Procedures.*

The Board of Review shall establish procedures for conducting its business. The procedures may include requirements for a quorum at meetings and for proxy voting. The Board of Review shall meet at least once each year and shall meet at the call of the chairman or three members of the Board. Any decision of the Board of Review under paragraph 13.D. or 13.F. shall be by a vote of five members.

#### *13.D. Disapproval Procedure.*

The Board of Directors shall submit the following actions to the Board of Review at least thirty days (or at least sixty days in the case of the annual budget) before they are to become effective:

- (1) the adoption of an annual budget;
- (2) the authorization for the issuance of bonds;
- (3) the adoption, amendment, or repeal of a regulation;
- (4) the adoption or revision of a Master Plan, including any proposal for land acquisition; and
- (5) the appointment of the chief executive officer.

If the Board of Review does not disapprove an action within thirty days of its submission under this Article, the action may take effect. If the Board of Review disapproves any such action, it shall notify the Board of Directors and shall give reasons for the disapproval, and that action shall not take effect. Unless an annual budget for a fiscal year has taken effect in accordance with paragraph 13.D., the Airports Authority shall not obligate or expend any money in such fiscal year, except for (1) debt service on previously authorized obligations, and (2) obligations and expenditures for previously authorized capital expenditures and routine operating expenses.

#### *13.E. Request for Consideration of Other Matters.*

The Board of Review may request the Board of Directors to consider and vote, or to report, on any matter related to the Metropolitan Washington Airports. Upon receipt of such a request the Board of Directors shall consider and vote, or report, on the matter as promptly as feasible.

**13.F. *Participation in Meetings of the Airports Authority.***

Members of the Board of Review shall be permitted to participate as nonvoting members in meetings of the Board of Directors.

**13.G. *Staff.***

The Board of Review may hire two staff persons to be paid by the Airports Authority. The Airports Authority shall provide such clerical and support staff as the Board of Review may require. All such staff shall be employees of the Airports Authority.

**13.H. *Effect of Litigation.***

The Airports Authority agrees that if the Board of Review is unable to carry out its functions described in this Article by reason of a judicial order, the Airports Authority will not take any action that must be submitted to the Board of Review under paragraph 13.D. above.

\* \* \* \*

**Article 16. *Payments.***

**16.A. *Lease Payments.***

The Airports Authority shall pay an annual rental to the account of the United States Treasury. For the first year of this lease, such annual rental shall be \$3,000,000. Subsequent annual rental payments shall be adjusted as of each anniversary of the effective date of this lease so as to equal \$3,000,000.00 in 1987 dollars by applying the Implicit Price Deflator for the Gross National Product published by the Department of Commerce in the March edition of the Survey of Current Business, or the appropriate successor index, as determined by the Secretary of Commerce. The parties may renegotiate the level of lease payments attributable to inflation costs every ten years. Lease payments shall be made from any

moneys of the Authority legally available for such purpose, after the Authority shall have first (i) satisfied its contractual obligations in respect of debt service on its bonds and other indebtedness and (ii) paid or set aside the amounts required for payment of the operating and maintenance expenses of the Airports. Subject to the foregoing, the Airports Authority shall make lease payments in semiannual installments commencing six months after the effective date of this lease. At the end of each month, the Airports Authority shall direct available funds into a reserve of the Airports Authority for purposes of making such lease payments, intended to accumulate on as equal a basis as possible the amounts due on the next lease payment date, which reserve shall be deposited in interest-bearing accounts or investment selected by the Airports Authority, with the rent payment and the interest actually accrued on the reserve account to be payable to the Treasury on the next lease payment date.

**16.B. *Retirement Obligations.***

(1) Not later than one year after the effective date of this lease, the Airports Authority shall pay to the account of the United States Treasury an amount determined by the Office of Personnel Management to represent the actual added costs incurred by the Civil Service Retirement and Disability Fund due to discontinued service retirement under section 8336(d)(1) of Title 5, United States Code, of Employees who elect not to transfer to the Airports Authority.

(2) Not later than one year after the effective date of this lease, the Airports Authority shall pay to the Treasury of the United States an amount determined by the Office of Personnel Management to represent the present value of the difference between (a) the future cost of benefits payable from the Civil Service Retirement and Disability Fund and due the Employees covered under section 6008(e) of the Act that are attributable to the

period of employment following the effective date of this lease, and (b) the contributions made by the Employees and the Airports Authority under section 6008(e) of the Act. In determining the amount due, the Office of Personnel Management shall take into consideration the actual interest such amount can be expected to earn when invested in the Treasury of the United States.

#### *16.C. Delinquent Payments.*

In the event payments under this lease are delinquent so as to constitute an Event of Default under subparagraph B.(1) of Article 23, the Secretary may, in addition to other rights available under this lease, assess interest at the Treasury Current Value of Funds Rate as prescribed by the Secretary of the Treasury on the date payment was due. In addition to this interest, penalty charges not to exceed six percent per year shall be assessed on any portion of a payment which is over 90 days past delinquent. Penalty charges shall accrue from the date the payment became delinquent and shall continue to accrue until payment is received. Delinquent payments may be collected by administrative offset whenever possible.

\* \* \* \*

#### *Article 19. Hold Harmless.*

To the extent permitted by applicable law, the Airports Authority shall indemnify, defend, and hold harmless the Secretary, her agents and employees, from any and all claims, liability, damage and expense incurred by reason of death, injury, loss or damage of or to persons or property arising out of the Airport Authority's operation, use and occupancy of the Metropolitan Washington Airports after the effective date of this lease. As between the parties hereto, the Airports Authority assumes all risk and liability for itself, its agents, employees, or contractors for any injury to persons or property resulting in any manner from the conduct of its opera-

tions, and the operations of its agents, or employees, and for any loss, cost, damage or expense resulting at any time from any cause due to any act or acts, negligence, or the failure to exercise proper precautions, of or by itself or its agents, or its employees, while occupying or operating the Metropolitan Washington Airports. Nothing herein shall be construed to indemnify the Secretary, her agents and employees for claims, liability, damage and expense arising in whole or in part from their own negligent or intentional acts or omissions.

\* \* \* \*

#### *Article 22. No Assignment.*

The Airports Authority shall not, through assignment of this lease or otherwise, substitute any other person for the Airports Authority as the party obligated as the tenant under this lease. Notwithstanding the foregoing, the Airports Authority shall be entitled from time to time and in its discretion to create easements, grant licenses, and sublease portions of the Leased Premises for use by subtenants, for purposes consistent with, and subject to the provisions of, this lease. No such sublease shall relieve the Airports Authority from any of its obligations pursuant to this lease.

#### *Article 23. Defaults, Events of Defaults and Remedies.*

##### *23.A. Defaults.*

Each of the following shall constitute a default by the Airports Authority:

- (1) failure by the Airports Authority to pay when due any lease payment required to be made by Article 16 hereof;
- (2) use of the Leased Premises for other than Airport Purposes; and
- (3) breach by the Airports Authority of any provision, other than those covered above, of this lease.

*23.B. Events of Default.*

Each of the following shall constitute an Event of Default:

- (1) the continuation of a default described in subparagraph A.(1) of this Article for 30 days after the due date of such payment;
- (2) the continuation of a default described in subparagraph A.(2) of this Article for 30 days after the receipt by the Airports Authority of a written notice from the Secretary specifying the claimed default, the affected portion of the Leased Premises, and the nature of the uses asserted not to be for Airport Purposes, provided that no Event of Default shall occur if the Airports Authority shall in good faith have commenced, within such 30 day period, to remedy such default and shall diligently and continuously proceed to cure such default; or
- (3) the continuation of a default described in subparagraph A.(3) of this Article for 30 days after the receipt by the Airports Authority of a written notice from the Secretary specifying the claimed default, provided that no Event of Default shall occur if the Airports Authority shall in good faith have commenced, within such 30 day period, to remedy such default and shall diligently and continuously proceed to cure such default.

*23.C. Remedies.*

Upon the occurrence and during the continuation of any Event of Default

- (1) described in subparagraph B.(1) or B.(3), of this Article, the Secretary may request the Attorney General to bring an appropriate action to compel the Airports Authority and its officers and employees to comply with the terms of this lease, and

(2) described in subparagraph B.(2) of this Article, the Secretary shall (a) direct that appropriate measures be taken by the Airports Authority to bring the use of such portion of the Leased Premises in conformity with Airport Purposes, and (b) retake possession of such portion of Leased Premises if the Airports Authority fails to bring the use of such portion into a conforming use within a reasonable period of time, as determined by the Secretary.

*23.D. Rights and Remedies.*

The rights and remedies of the Secretary in this Article are exclusive of any other rights and remedies.

**Article 24. Disputes.**

**24.A. Litigation Procedure.**

Under section 6005(e) of the Act, the district courts of the United States shall have jurisdiction to compel the Airports Authority and its officers and employees to comply with the terms of this lease. An action may be brought on behalf of the United States by the Attorney General, or by any aggrieved party. An action to enforce the terms and conditions of this lease may also be brought on behalf of the Airports Authority in a district court of the United States.

Except as a court may order or the parties to this lease may otherwise agree in writing, pending resolution of any action under this Article, the parties shall proceed diligently with performance of all obligations under this lease.

**24.B. Litigation Records.**

Records relating to matters litigated under this Article or to litigation or the settlement of claims arising under or relating to this lease shall be retained until such litigation (including any appeals) or claims are disposed of.

\* \* \* \*

*Article 27. Lease Not Affected by Oral Agreement.*

No oral statement of any person shall modify or otherwise affect the terms, conditions, or limitations stated in this lease. All modifications to this lease must be made in writing by the Secretary and the Airports Authority or their authorized representatives.

*Article 28. Law of Agreement.*

This lease shall be governed by and construed in accordance with federal law. To the extent that the application of federal law requires or permits the application or consideration of state law, the parties agree that the law of the Commonwealth of Virginia is most relevant to this lease and shall be applied or considered. The powers of the Secretary with respect to this lease shall be construed in accordance with and governed by Federal law, and the powers of the Airports Authority with respect to this lease shall be construed in accordance with and governed by Virginia law.

*Article 29. No Waiver.*

No failure by either party to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no payment or acceptance of full or partial payments during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant or condition. No waiver of any breach shall affect or alter this lease, but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof.

*Article 30. Captions.*

The captions and headings in this lease are inserted only as a matter of convenience and for reference, and

they in no way define, limit or describe the scope of this lease or the intent of any provision thereof.

*Article 31. Partial Invalidity.*

If any term or provision of this lease, or the application thereof to any person or circumstance, shall to any extent be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of the lease shall be valid and be enforced to the fullest extent permitted by law.

*Article 32. Certificate of the Secretary.*

The Secretary agrees to execute and deliver to the Airports Authority and/or any other person or entity designated by the Airports Authority, at any time and from time to time, upon not less than 30 days' prior written notice by the Airports Authority (which notice shall state that the Airports Authority requires same in connection with a financing or other undertaking), a statement in writing:

- (i) certifying that this lease is unmodified and in full force and effect (or if there have been modifications, that the lease is in full force and effect as modified and stating the modifications);
- (ii) stating the dates to which lease payments and other charges hereunder have been paid by the Airports Authority;
- (iii) stating whether, to the best knowledge of the Secretary, the Airports Authority is in default in the performance of any covenant, agreement or condition contained in this lease, and if so, specifying the nature of such default; and

(iv) stating the address to which notices to the Secretary are to be sent.

Any such statement delivered by the Secretary may be relied upon by any lender, bond holder, trustee or other person proposing to enter into agreements with the Airports Authority as an estoppel of the Secretary's right to assert a position inconsistent with such position.

\* \* \* \*

*Article 35. Memorandum of Lease.*

Upon the request of the Airports Authority, the Secretary agrees to execute, in recordable form, a short-form memorandum of this lease, which memorandum may be recorded at the Airports Authority's expense in appropriate land records.

ENTERED INTO THIS SECOND DAY OF MARCH, 1987

For the United States of America:

/s/ Elizabeth Hanford Dole  
**ELIZABETH HANFORD DOLE**  
Secretary of Transportation

For the Metropolitan Washington Airports Authority:

/s/ Linwood Holton  
**A. LINWOOD HOLTON, JR.**  
Chairman, Board of Directors

[Notary Stamp Omitted in Printing]

APPROVED, pursuant to section 3 of Chapter 598, Virginia Acts of Assembly, 1985 Session:

/s/ Gerald L. Baliles  
**GERALD L. BALILES**  
Governor of Virginia

APPROVED, pursuant to section 4 of D.C. Law 6-67:

/s/ Marion Barry, Jr.  
**MARION BARRY, JR.**  
Mayor of the District of Columbia

**Metropolitan Washington Airports Lease  
Certification of Effective Date**

In accordance with Article 9 of the Lease of the Metropolitan Washington Airports between the United States of America and the Metropolitan Washington Airports Authority as entered into on March 2, 1987 (the Lease), we hereby certify that: 1) the Governor of Virginia and the Mayor of the District of Columbia have approved the Lease; 2) all conditions in Articles 15 and 20 of the Lease have been satisfied; and 3) the Lease shall be effective as of 12:01 a.m., June 7, 1987.

Executed this 5 day of June, 1987.

/s/ Linwood Holton  
**LINWOOD HOLTON**  
Chairman, Board of Directors  
Metropolitan Washington Airports Authority

**Metropolitan Washington Airports Lease  
Certification of Effective Date**

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Executed this 5 day of June, 1987

/s/ Elizabeth Hanford Dole  
**ELIZABETH HANFORD DOLE**  
Secretary of Transportation